

AMENDED

MINUTES FOR THE MEETING OF THE BOARD OF LAND AND NATURAL RESOURCES

DATE: WEDNESDAY, DECEMBER 1, 2010
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Jerry Edlao
Dr. Sam Gon

Ron Agor
John Morgan
David Goode

STAFF

Dr. Bob Nishimoto/DAR
Carty Chang/ENG
San Lemmo/OCCL
Bin Li/ADMINISTRATION
Curt Cottrell/PARKS

Dan Quinn/PARKS
Russell Tsuji/LAND
Ed Underwood/DOBOR
Paul Conry/ACTING
DEPUTY

OTHERS

Linda Chow, Deputy Attorney General
Nalani, E-1
Tim Lui-Kwan, D-2
Lisa Moger, K4, K-5
Kimo David Frankel, K-4, K-5
Ryan Swindle, K-4, K-5
Mike Kido, K-4, K-5
Leonard Hoshijo, K-4, K-5
Terry Conlan, J-1
Bruce Lenkeit, J-1
Robert Clark, J-1

Quentin Kawanana, E-1
Dr. Tony Ostrouski, L-1
Mike Maberry, K-4, K-5
Marti Townsend, K-4, K-5
[Keeki]Kiope Raymond, K-4, K-5
Jeff Coon, K-4, K-5
Paul Colman, K-4, K-5
Harrison Kawate, J-1
Dave Cooper, J-1
Janet Mandrell, J-1
Representative Kokubun, H-1

{Note: language for deletion is [bracketed], new/added is underlined}

~~[Throughout the days]~~ Staff and the public stated their well wishes to the Chairperson.
A number of written testimonies were received and distributed.

Item F-1 Request for Approval to Amend/Extend a DLNR/RCUH Agreement for the Division of Aquatic Resources' Aquatic Invasive Species Project, Contract No. 52850 (Amendment No. 8), that Provides \$270,782 in Added FY11 Special Funds and Extends the Agreement Through June 30, 2012.

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) introduced Tony Montgomery from DAR who was the PI on this project. The reason for the extension was there were contracting delays in FY10 and they need additional time to do the work. Also, to utilize the FY11 funds to work on the algae issues in Kaneohe Bay.

Member Gon acknowledged the importance of the work.

Chair Thielen related her visit to the Super Sucker in Kaneohe Bay where it takes off invasive algae, but regrows quickly and at that time Tony mentioned the innovative concept of creating an urchin nursery. Staff repurposed the Anuenue Fisheries into an urchin hatchery and tested an area which has been successful in keeping the algae under control.

Unanimously approved as submitted (Morgan, Gon)

Item E-1 Request for Approval to Conduct Public Hearings to Amend Hawaii Administrative Rules Chapter 13-146 Hawaii State Park System, Sub-Chapter 5 Relating to Iolani Palace State Monument

Dan Quinn representing State Parks conveyed that there have been problems with management of the Iolani Palace grounds which led to the adoption of some rules, specifically to manage the palace grounds and in part of the rules the management was to help regulate the assembly and gathering on the grounds. Due to the probable presence of iwi around the burial mound area which is the makai Diamond Head quadrant of the grounds and by request of the Friends of Iolani Palace that quadrant was not a place where permits were issued for assembly and gathering out of respect for the iwi. Subsequent to that there are a number of groups that wanted to gather in that area particularly around the anniversary of the overthrow of the Monarchy. The amendments to the rules are to allow assembly in the quadrant of the burial mound and to allow assembly without permits on the day of the anniversary of the overthrow. This is a request for staff to go out to public hearings to modify these rules in a fashion that will allow increased freedom of assembly on the Palace grounds. The recommendations are to grant approval to conduct a public hearing, to go as expeditiously as possible to conduct this public hearing and also to authorize the Chair to appoint a hearing master to conduct the hearing.

Member Agor inquired whether people have been showing up. Mr. Quinn confirmed that they have had groups of 25 or more and the way the rules are written a permit is required for groups of 25 or more. The groups that have assembled are less than a 100 people. There are dates suggested that the Division shouldn't require a permit, but it gets unruly and unmanageable.

Quentin Kawananaoka testified that he is First Vice-President of the Friends of Iolani Palace and Chair of Aha 'O Iolani which is a new organization established a year ago comprised of about 50 organizations who participate in discussions regarding Iolani Palace proper protocols from a Native Hawaiian perspective. These groups range from OHA, Royal Societies and to the various sovereignty groups. In the past there were issues regarding the proper conduct on the palace grounds. The Aha 'O Iolani mission is the responsibility to care for respect, honor and cherish the power and life force of the royal compound, Iolani, for the sake of our nalani ali'i, ancestors, this generation and future generations. Their organization met with Chair Thielen and her staff over the past year regarding the property on the grounds of Iolani Palace where a couple items came up with respect to using the third quadrant around the burial grounds. The Friends and the Aha concurred that quadrant should be made open for permitted uses for Iolani Palace or for groups that wish to have events. As for opening the palace on particular dates with or without permits, the Aha felt this was premature since they didn't have time to discuss the matter fully and there were too many risks to move forward until further discussion could be made. Some of the concerns raised of the draft proposed amendments would not require any permits for any activities under HAR§13-146-7(c) which includes building structures, putting bathrooms on the property, loud speaker systems, dogs on the property, etc. The further permitted activities were for organized events for large gatherings that could be done without harming the premises. The Aha is in full support of opening the third quadrant for use via permit and they feel it's premature and unwise to have the dates open at this time with regards to no permits.

Nalani representing the Aha 'O Iolani testified in appreciation to Quentin in bringing people together to come to a consensus by working together and thanked Chair Thielen who gave a perspective and ideas which were helpful in moving the group forward. It's an excellent process and productive in her view as a peacemaker. There is on-going discussion that this is sacred ground – it needs care, it needs protection, it needs to be honored where there are different ideas on how to properly honor it, but there is consensus that great care is needed and the people need to be there to do that. Things in the rules like barbecues are not for consideration, but there is concern with removing restrictions on everything. Although the likelihood of those things happening on those dates are low and which is the general feeling. There is a strong consensus on part of it – in favor, and also in favor with amendments on other parts.

Member Gon asked whether the representatives were in concurrence with taking this to public hearing and to move that process forward. Mr. Kawananaoka confirmed that. Member Gon asked whether the Aha will be meeting prior to that public hearing and will put forward specific recommendations at that hearing. Mr. Kawananaoka replied he believes so and mentioned that the issue with regard to forwarding this process is that

they would like to see some discussion of not having to apply for permits. There is a strong feeling that would be appropriate and there are strong feelings that would be haphazard or the wellbeing of the palace grounds. Maybe make recommendations to make it appropriate and his concern is it moves forward. Whether or not that can be amended at a future time after the next public hearing and still afford the Board to move it forward in a timely manner is his concern. He wondered whether it was possible for this Board to amend this motion and move one part forward and leave the second part for further discussion at another time. Member Morgan said to paraphrase Mr. Kawanakoa is asking the Board to sending it to public hearing with the recommendation to leave the quadrant to be open, but deleting the no permit requirement on the specific day.

It was asked by Nalani whether amendments recommended by the Aha would be possible during the public hearing and per Member Gon that is the purpose of the public hearing. Nalani reiterated the concerns and what needs to move forward.

Mr. Kawanakoa said an amendment would be premature, but meaningful discussion with regard to that item on the no permit is necessitated. Nalani said its necessary and this is not the end of solution building for Iolani Palace.

It was Member Goode's concern whether the Aha had neighbor island representation when the public hearing is held on Oahu because of travel difficulties. Mr. Kawanakoa said they do, but it's limited for the same reasons he mentioned, but they have extended their outreach to neighbor islands and something on the agenda that requires some actions would be helpful.

Member Morgan asked on January 17th for any year in the future somebody comes up to build a stage and a microphone and all of that is permissible under the rules. Mr. Quinn said potentially, but there's possibility that they could have some problems. The intent was to allow people in a group that exceeds 25 without going through the permit process, but there is always the possibility that people might abuse that privilege. Member Morgan agreed that there are people in the community that would relish that opportunity if they had it and the proposal is giving that opportunity. Nalani said that is why there is further discussion is needed to work out the details. Mr. Kawanakoa related the Akaka Bill that these organized events will become more important. This is a monumental opportunity for the Native Hawaiian organizations to come together, discuss their differences and to resolve them as a Native Hawaiian community in which they can move forward and share their concerns and beliefs with regard to protocol, appropriate conduct and what they deemed to be the Native Hawaiian cultural activities or actions. There have been difficulties between Native Hawaiian organizations in the past with regard to the use of the palace and subsequently with DLNR. It's always been awkward because the administration is trying to enforce the rules that have been put in place. The Aha attempts to be a medium through which we can all discuss these potential issues of conflict.

Member Gon appreciated the collective agreement of the sacred nature of Iolani and working from there for an agreed upon set of protocols, rules and behavior that don't necessarily need to be codified within the rules of DLNR, but are embodied in the people that gather at Iolani Palace. Now that you know that the public hearing will focus on bringing those kinds of things forward including the idea of the "no permits" item and with your concurrence that can remain in here since that will be an item of discussion at that public hearing rather than bringing it here with a motion. Nalani reiterated the discussions to be held to get a solid consensus to move forward.

Chair Thielen explained that if you're not familiar with that administrative hearing process we are at the stage now where the Board is being asked to do is take it to hearing. At the hearing staff will gather the input and the thoughts and they will bring that back to the Board with any recommended amendments. There are 12 items listed in the administrative rules that can only occur with the permit. If at the hearing it comes back where there is consensus that certain items will continue to require a permit and gave the example of barbecues or cooking or construction, but other things like tents or awnings maybe shouldn't require a permit on those anniversaries. That is input that could come back to the Board and staff where they can amend the rule in front if it's a non-substantive amendment and can just adopt it because a substantive would go back for additional public hearing and can be modified. We are at the initial stage of putting something out for discussion and part of the question is there are certain dates where it would be difficult to enforce some of these rules like 25 or more people. How do you prove that the 25 people gathered there as a group rather than spontaneously there on an anniversary date? There are strong beliefs by other people where the State doesn't have a right to require a permit and they want to accommodate some of those beliefs in a respectful manner which is where the Aha could be very helpful in gathering that consensus and maybe identifying a sub-list of things that are okay. Member Morgan asked whether that could be inserted at this point. The Chair said the request is should they move it out to public hearing to gather that kind of input and doing that will give people a focus on what is on the table. It would be helpful to get neighbor island input as well and then come up with specific recommendations on dates and activities on where a permit is not necessary and should be authorized. The Board would be interested in hearing that input.

Mr. Kawanakoa appreciated the response the Chair has given the Aha. That this is not the end of the discussion and Chair Thielen had suggested creating a special use zone or special Hawaiian cultural area by designating Iolani Palace and perhaps Mauna Ala that you have a different set of rules than the basic DLNR partners because in many ways this comes from Iolani Palace not being just a park, it is much more. It needs special care and special consideration with regard to its use, as well as other areas where this could be implemented.

Member Morgan asked whether he was comfortable with the motion as is or moving that reference to no permits. Mr. Kawanakoa said that the motion as is appropriate because of the willingness of this Board to listen and understand the difficulties of that particular

section and they wouldn't want to take that discussion off the table at this point and hope they can come to resolve it at that period of time.

Member Gon moved to approve staff's recommendation and Member Morgan seconded it. All voted in approval.

Chair Thielen noted as they go forward it is difficult for DLNR and DOCARE to be in the role of having to enforce protocols in administrative rules. She thought it was important in the discussion for the Aha to be determining what the rules for the State to enforce and what should be protocols that the Aha gathers support and consensus for and implement in different ways.

Unanimously approved as submitted (Gon, Morgan)

**Item L-1 Approval to Enter Supplemental Contract for Grant-In-Aid
Agreement with The Oceanic Institute for Feed Mill Laboratory,
Hawaii**

Carty Chang representing Engineering Division reported on the background, but there have been delays. The current leadership is poised to move forward. He wanted to add that the Institute will do a supplemental EIS since the EIS was already done by the University of Hawaii.

Member Gon asked what the date was of the previous EIS. Dr. Tony Ostrouski said around the late 1990s.

Dr. Tony Ostrouski, President of the Oceanic Institute since 2009 is a non-profit research organization located on the windward side testified that our animal agriculture industry is threatened and we need to look for alternatives for feed. They are working with the bio-fuels industry to look for ingredients to use as feed. This Feed Mill will allow them to look at alternative agriculture products here for our animal feed and terrestrial animal industry. He asked the Board to move forward on this project.

There were some positive comments by the Board members.

Unanimously approved as submitted (Morgan, Gon)

**Item D-1 Set Aside to Hawaii Housing Finance and Development Corporation
for Affordable Family Rental Housing Purposes; Amendment of
General Lease No. S-4319, Kinooole, Lessee; Issuance of Immediate
Management Right-of-Entry to Hawaii Housing Finance and
Development Corporation, Waiakea, South Hilo, Hawaii, Tax Map
Keys: (3) 2-4-25:01 & 02.**

Russell Tsuji, Land Division Administrator communicated that staff is requesting the Board to set aside a parcel to HHFDC, amend the current lease held by Kinooole and grant

an issuance of a management right-of-entry to HHFDC. This was meant to be a low income housing project, but things got complicated with the tenant and related some history regarding affordable housing and HHFDC. HHFDC is willing to accept the property and work with the tenant. The tenant's attorney is here who provided his signed written testimony to the Board. Staff had some issues of what is being requested in the written testimony and whether it is possible while the lease is under DLNR. One is an extension of the lease which is already at the statutory maximum of 75 years. And to change or substitute the lessee to another entity for purposes of investment tax credits. The issue is the entity is a for profit entity and the issue is whether staff could issue a direct lease directly. Staff's preference is HHFDC has the authority rather than DLNR.

Chair Thielen said to Dickson Lee that she didn't think there was any opposition to the request, but it's the ability of this Board to authorize it or once the transfer happens with HHFDC whether to request that Board to authorize it. She asked whether he would support the transfer to HHFDC and would he support the ability to seek those requests from them subsequent to the transfer.

Dickson Lee, the tenant's attorney acknowledged they are in favor in [the] transferring the set-aside to HHFDC and explained the reason he requested for the additional items is because they are against a time constraint. The low income tax credit program was a Federal and State housing program which is administered by HHFDC. Kinooole is a private non-profit corporation. In order to raise the funding to renovate this project it has entered into a partnership agreement with a for profit entity where that partnership will qualify for low income tax credits from the State from HHFDC and for those low income housing tax credits the investor will put money into the project to renovate the project. Chair Thielen noted that we don't know whether we have the authority to grant the request because of the statute that governs DLNR's property transfers where she reiterated her question whether his preference is this Board approve this transfer to HHFDC or defer to examine these things to go on a future Board agenda. Mr. Lee acknowledged that and said he would like the DLNR to convey the property directly to HHFDC as soon as practicable. As a compromise proposal maybe the Board issue a conditional or vote of confidence of the proposal they are looking for because he needs to provide that to the partnership. Chair Thielen said she doesn't think they can do that under the Sunshine Law. All that is noticed is a set aside to HHFDC and again she isn't sure whether they have the authority to do what he asks. Mr. Lee said he'll take what he can get and asked the Board to approve the motion.

Member Goode said it looks like this is a timing issue and they are trying to get something done by the end of this calendar year so the monies can come in. Mr. Lee said this is a State initiative to provide housing to the poor to be carried out through Kinooole who will continue as a general partner. Member Goode noted that once the Board makes a decision today this item will be out of our hands completely and then HHFDC will have control of the property. There was some discussion that Mr. Lee could ask HHFDC for any future action and the Board agreed. It was asked by Mr. Lee whether HHFDC has to come back to the Board for anything else and the Chair said she didn't think so.

Stan Fujimoto representing HHFDC supports this transfer.

Member Goode moved to approve and Member Morgan seconded it.

Unanimously approved as submitted (Goode, Morgan)

Item D-2 Consent to Assign General Lease No. S-5700, George Y. Tamashiro and Suzuko Tamashiro, Assignor, to Hiram Rivera, Assignee, Kealakehe, South Kona, Hawaii, Tax Map Key:3rd/7-4-20:18 & 20.

Mr. Tsuji explained that George Tamashiro can't continue this lease and has an applicant willing to take over the property.

Tim Lui-Kwan representing the Tamashiros said they had nothing to add and agreed with the conditions proposed in the staff report.

Unanimously approved as submitted (Morgan, Agor)

Chair Thielen described Items K-4 and K-5 that was deferred from the November 22nd Land Board meeting because of some issues that came up during the public testimony. Staff has prepared some additional materials that were distributed to the Board members. Also, the people who testified the last time are here to provide testimonies and the Board's legal counsel is here if they should need to go to executive session to discuss some of the issues raised the last time that has been subsequently researched. The Chair related the order of the process.

Item K-4 Request to Approve the University of Hawaii, Institute for Astronomy's Management Plan for the Haleakala High Altitude Observatory Site at Puu Kolehale, ahupuaa of Papaanui, moku of Honuaula, Makawao District, Maui, TMK (2) 2-2-007:008.
Submittal to be distributed.

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL) said staff has submitted additional information to the Board members which is a copy of the Management Plan in the actual report. Also, staff identified comments in the report that had been made by the Native Hawaiian Legal Corp. on behalf of their client and staff provided a response to those comments in the report. Staff continues to recommend approval of the Management Plan because they feel it meets the requirements of their rules, specifically Exhibit 3.

Chair Thielen said like the last meeting both items K-4 and K-5 will be taken together, but will be voted separately and suggested the Board take any questions on K-4, the Management Plan and then have staff do the presentation and any supplemental motion on the conservation district use permit (CDUP).

Member Gon said he had some questions, but thought it would be better to wait until after public testimonies.

Item K-5 Conservation District Use Application MA-3542 regarding the University of Hawai'i, Institute for Astronomy's Advanced Technology Solar Telescope at Puu Kolehale, ahupuaa of Papaanui, moku of Honuaula, Makawao District, Maui, TMKs (2) 2-2-007:008; 2) 2-2-007:007. *Submittal to be distributed.*

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Mr. Lemmo described Item K-5 and that the Board has additional materials. On the first page of those materials staff has highlighted some things that were appended to the report. Staff appended a full copy of all written comments, appended the programmatic agreement between the various parties and modified a condition that would allow the applicant 2 years to initiate and 7 years to complete construction. The original recommendation had 1 year to initiate and 7 years to complete. The analysis is largely the same although staff added additional analysis to their recommendation and the recommendation continues to remain for approval of the project.

Mike Maberry, Assistant Director for the University of Hawaii, Institute for Astronomy (IFA) testified that the University will stand on its written testimony given on November 22nd in regards to the Management Plan and they request that it be approved. The IFA is the applicant for CDUA MA-3542 as noted in their submittals, in 1961 by Executive Order 1987, Governor Quinn set aside 18.166 acres of land near the summit of Haleakala on Pu'u Kolehale to establish the Haleakala High Altitude Observatory Site or HO and placed it under the control and management of the University of Hawaii establishing the first astronomy observatory site in Hawaii. Based on Article 10, Section 5 of the Hawaii Constitution the site was set aside fee simple as noted in OCCL staff's presentation on November 22nd to the Board. The HO is private property. There is no public use. There is no recreational use. There is no commercial use. The 18 acres that make up the HO constitute an astronomy precinct to be use per Executive Order 1987 for observatory site purposes only. The University of Hawaii 2005 HO long range development plan which was accepted by the Board Regents specifies that the only undeveloped site within the HO is the site being proposed for the Advanced Technology Solar Telescope (ATST). Other than one previously developed site, the Reber circle site, all future projects at HO will reuse or recycle existing observatory sites. The University has established the carrying capacity of the HO. Public consultations for the proposed ATST have been

extensive beginning in 2005 with consultations on the EIS preparation notice that included 3 public meetings. The draft EIS became available for public comment in September of 2006. Response to comments received on the draft EIS a supplemental draft EIS was prepared and was made available for public comment including 2 additional public comment meetings. In July 2009, the final EIS was published which included mitigation measures that were developed during the extensive EIS consultation process. Public input was also sought and received in connection with the consultation process under Section 106 of the National Historic Preservation Act. Through written invitations, newspaper, radio notifications, announcements, person to person messages and even the coconut wireless the National Science Foundation (NSF) invited Native Hawaiian organizations, individuals and the public to participate in the Section 106 consultation process. Informal consultation was initiated in 2006 that was followed by more than 30 formal and informal consultation meetings that culminated in a Programmatic Agreement and was executed between the NSF and concurring parties in November of 2009. In addition to other mitigation measures, the Programmatic Agreement established the ATST Native Hawaiian Working Group. Through this Group the NSF encourages cultural mitigation measures before, during and after the Working Group meetings. The ATST Native Hawaiian Working Group has met 3 times since its inception in late 2009 and consultations with the Group will continue with a meeting scheduled in February provided the project is approved. In December 2009, the NSF published a record of decision that considered mitigation measures from both the EIS and the Section 106 process and concluded it was appropriate to fund the construction of ATST at HO. On March 10, 2010, following the issuance of the record of decision the University of Hawaii, Institute for Astronomy submitted a CDUA for the ATST at the HO. OCCL spent almost 60 days carefully reviewing the more than 1800 pages of environmental, cultural and historic impact statements, assessments and studies to evaluate the project with respect to the 8 criteria which are required for the issuance of a CDUP. Staff concluded that the CDUA was in fact complete and on June 9, 2010 accepted the ATST CDUA for review. The acceptance of the CDUA initiated the 180 day process that will conclude on December 6th. The staff report presented to the Board on November 22nd recommended the Board approve CDUA MA-3542. The revised staff report the Board received today also recommends the Board approve the CDUA MA-3542. The University of Hawaii respectfully requests approval of the CDUA. Yesterday, the IFA submitted additional testimony that included our responses to comments made during the November 22nd BLNR hearing meeting and much of that was included in the staff report the Board received today. They would be happy to respond to other testifiers today, however, if the Board has any concerns that have not been addressed today with the CDUA the University requests a 90 day extension. Their request is made pursuant to HRS 183(c)-6(b) which allows an extension of an additional 90 days beyond the 180 day CDUA period when an EIS is required or when a contested case hearing is requested. Since an EIS is required for this project and since a contested case hearing has been requested a 90 day extension is allowed as the Deputy Attorney General will confirm for you. Mr. Maberry thanked the Chair and the Board.

Chair Thielen asked for clarification whether the University's position is that State law authorizes a 90 day extension and that on December 6th there would not be an automatic approval of the application due to the University's request for an extension.

Lisa Monger from Goodsill Anderson on behalf of the applicant testified they are entitled to request an extension from the Board of the 180 day period and if that extension is granted then additional time is permitted. If our extension request is not granted then the 180 day deemed approval provision would apply.

Member Gon asked for clarification whether or not a request for extension has been received by the Department. Chair Thielen said this would be the formal request here, but it was her understanding from the testimony is the University's first preference is the Board to approve the permit and the second is if the Board is seeking additional information that you would make a request for an extension. Ms. Monger confirmed that was correct.

Marti Townsend representing KAHEA – the Hawaiian-Environmental Alliance testified in opposition of the approval of the Management Plan and the CDUA for the telescope. Their testimony has been consistent across the issues related to Haleakala and Mauna Kea noting that there is serious mismanagement of these conservation districts by the telescope community. This is an attack on the quality or the value of astronomy as an endeavor, but more about the need to manage the conservation areas for the purposes they were established which is protection of natural and cultural resources. It is irrelevant in this situation that Haleakala is considered fee simple. This property is regulated as a conservation area. The Board is aware how private property rights are limited for the betterment of all of us in conservation areas. In this situation the BLNR can't issue this permit because there are 8 criteria for issuing a CDUP and this ATST cannot satisfy them. The first one is a glaring example that says whatever land use activity that is approved shall not have a substantial or adverse impact to the natural and cultural resources of the conservation district. All the analysis, the 1800 pages have come to the conclusion that there have been substantial and adverse impacts to the conservation area. Additional telescope activity and construction will add to that substantial adverse impact and that is why you cannot adopt the CDUA. And the point about consultations with the public, as in Mauna Kea, the University of Hawaii is controlling the dialogue. They sit on both sides of the table – they are both manager and applicant advocating for the telescopes and overseer of the telescopes. They dictate who gets to sit on to discuss these issues, they nominate and appoint 100% of the Advisory Board, cultural practitioners, environmentalists, conservationists and is not an open and community based process. Ms. Townsend implored the BLNR to please take over control of both management activities on both Haleakala and Mauna Kea to institute a truly community based management system that allows for true genuine debate about whether construction for these telescopes on these summits are in the best interest of these conservation districts.

Chair Thielen pointed out that she understands the request on the CDUP and she thinks KAHEA has a policy issue about the University being the manager, but she thinks it's

somewhat ironic when the complaint is the lack of management that KAHEA is opposing the Management Plan and have done so in Mauna Kea as well. Ms. Townsend explained the reason there is because the Management Plan doesn't put limits on construction and there needs to be a balance to manage conservation resources and there is no standard by which to limit telescope construction. The Chair said but in the absence of approving a Management Plan there is none.

David Frankel with the Native Hawaiian Legal Corporation representing Kilakila 'O Haleakala testified that Keoki is the leader of the organization and he will be talking about the adverse impact of this proposal, but Mr. Frankel wanted to talk about the law and the Management Plan. It was noted that they have not seen the staff submittal and was not provided to them. They are renewing their request for a contested case hearing for both the Management Plan and the ATST CDUA. They understand the Board's position with regard to contested case hearings for the Management Plan. Clearly, you cannot vote on the CDUA for the ATST without providing them an opportunity for a contested case hearing. There seemed to be at the last meeting some confusion between a contested case hearing that is held on appeal versus a contested case hearing that is held as to an application. The confusion stems in part because there are some agencies which are appeal agencies giving the example Hawaii County has a Board of Appeals and would need the decision of the Planning Director or the Planning Commission has to be appealed to those bodies and a contested case hearing is held there in an appeal of a decision.

Chair Thielen suggested that what Mr. Frankel is arguing to the Board is that when we've received a request for a contested case hearing under our rules and laws; we cannot make a decision and have to put it to contested case hearing. So we'll take that argument and she suggested that Mr. Frankel move to the next topic because he is trying to make a legal argument to this Board and this Board will rely on our counsel. He has had discussions with our counsel and we are aware of the argument and she thinks it would be good for him to shift to his policy arguments and invest his time on that in front of the Board. That is up to him to decide.

Mr. Frankel said he has not had an opportunity to discuss this with Ms. Chow (Board's counsel) and he thinks it's important to provide a different legal perspective because there is a difference between us and the Board needs to hear this. When this Board rendered a decision denying a CDUP for Dan at Honoali'i on the Big Island you had a contested case hearing and the decision of the Board to deny the CDUA was appealed and a contested case hearing was rendered before the Board's decision. About 9 or 10 years ago on a Mauna Kea telescope the Board held a contested case before they voted. Also, on the Haseko drainage, Haseko Kaloi Gulch, as well as the proposed power lines on Wa'ahila Ridge the Board held a contested case before voting. In addition the practice of the Board and of applicants is once the request has been made not only is a contested case hearing held, but the applicant routinely asked for an extension so there is not automatic approval. If time expires in the middle of a contested case hearing the courts will reverse the decision which happened in the Keahole power plant when neighbors asked for a contested case hearing and Hawaiian Electric argued the time limit had past

and it would automatically approve where there was an appeal to Judge Ibara who sent it back saying no that these people have a due process rights. It is clear that because you have procedural request for a contested case hearing that is what needs to occur.

Mr. Frankel spoke on the Management Plan where the components are A. Either provisions that are already in existing CDUPs and do not add any management than that is already required by law or B. Provide no specific or enforceable language. They say they are monitoring and other activities are subject to funding. If a private developer comes to you with an application that says we are going to do whatever and you grant conditions the conditions are not based on if that developer is going to have sufficient funding or not, they got to do it, but this Management Plan says we don't have to do anything if the Legislature doesn't provide funding then its not a management plan because they aren't promising anything. The Management Plan not only doesn't add substantive provisions to what's already required, but those quote requirements that are there are completely unenforceable. Mr. Frankel agreed with Ms. Townsend that this is not a comprehensive management plan that such a plan looks at the full build out and what are the impacts. What are the carrying capacities of the area? This management plan doesn't talk about in specifically the square footage, the height, the density, any of that. What it does is allow future facilities to be built in a way that incrementally will increase a huge significant impact of a built environment up on a sacred area next to a National Park and it is a project the National Park has opposed.

[Keeki]Kiope Raymond testified that he is a resident born and raised on Maui who is a tenured professor in the University system teaching Hawaiian studies and is the Humanities Department Chairperson. He is also the President of the non-profit organization Kilakila 'O Haleakala which was formed to educate the public on these matters and to be a watch dog for the summit area. There is a lack of a comprehensive management plan for their summit and that is really important because of separate entities that are able to put forward long range development plans and now becoming part of management plans and those plans impact neighbors like the National Park. Mr. Raymond is also a Board member of the Friends of Haleakala National Park and one of their members, Don Resser testified 12 years ago that he thought there should be a management plan and spoke about it 10 years prior to that. It's been 2 decades of people saying a management plan is needed. Mr. Raymond appreciates the time people are taking here, but it's a matter of stewardship and he applauds members of the Board because tries to be kumu of Hawaiian studies and tries to impart on his students of relationship to aina and he knows the Board members all feel that. You are in affect a konohiki for all of us and it is much appreciated. You have a tremendous kuleana. When Mr. Raymond thinks of the mountain itself there is a spiritual side to it that he wanted to share where he related his family background. He grew up in Lahaina and the family would make an annual pilgrimage to the top of the mountain which he did for 50 years. During those 50 years there was Science City and you don't go inside Science City. The University of Hawaii now allows access into Science City, especially if you are Hawaiian and can read the sign otherwise you would turn around and go away. He hasn't been up there recently because he is sick to his stomach because he is denied, he believes, his rights because he knows where the ahu would go...you can practice

spirituality anywhere, but this happens to be a very special place called Kolekole. Mr. Raymond respects what Charles Maxwell worked with on the Institute of Astronomy that you have the female ahu to Hina and the male to Ku. We have to acknowledge that a connectedness for many Hawaiians and part-Hawaiians is developing. As Mr. Raymond's Hawaiian spirituality has developed and is now re-allowed access into there he finds this perpetuity or as long as the Executive Order exists to allow access and that can be rescinded at any time is only to the Hina site. He is a kane and the kane site is...(with emotion) he had a spiritual epiphany. There maybe other people from Maui, but he is the only one representing pro-Hawaiian sites from Maui as far as he understands. In other words, against allowing the CDUP for the ATST and we encourage the EIS being asked of the applicant because it is a separate entity and it has impact. If you look at the supplemental cultural assessment you will find that the conclusions of Cultural Surveys Hawaii that Hawaiians overwhelmingly felt that place spiritual and that place should not have any more. It's prescriptive. It's been there a long time and there are a lot of buildings already there and we will take it down after 50 years. We can't buy into that. Reber Circle, there are pieces of concrete that has been there for 50 years and they can't even clean that up. Mr. Raymond is appalled at the lack of stewardship on the part of the applicant within those 18 acres. Now that he is allowed access and can look around to see inside there. There is no malama aina. They can say they will malama aina, but Mr. Raymond doesn't believe it. He would appreciate it if the Board would ask him questions like about the story of the snaring of the sun so he could share his perspective. We'll that is a harnessing of energy. It impacts conservation districts because the applicant is trying to tie "House of the Sun" - there is no better place for a solar telescope, but what a minute. This is just a pure scientific theoretical physics study of the interior of the sun whereas Maui slowing down the sun if we want to translate it into modern terms is a harnessing of energy - a sustainability. Where's the photovoltaic fields? Its not. They are going to drain off the electric grid. Mr. Raymond finds the staff report inadequate in summary and suggested looking at it again. There is a picture of the decibels that people will be affected by and obvious to him that the center of the radius of the circle is not over where the proposed ATST is going to be. It's over where the existing AEOS is going to be. Mr. Raymond asked where is the due diligence. Did you take an old report and lift it saying close enough and we'll put it in there? That isn't right. The rendering of the picture is wrong and he insisted you got to get that right because this is his tax dollars paying for all this. He thinks its insulting as a Hawaiian that the Institute for Astronomy and the National Science Foundation has known since 2003 that there are 70 sites that they examined and knew Haleakala was a sacred site to Hawaiians. Charles Maxwell said this is sacred and you got to stop doing this. Hawaiians has all along said this is sacred and to please do a management plan. Mr. Raymond asked the Board to require an EIS that the Board deny today the CDUP for the ATST and postpone all further consideration on this.

Member Gon asked as a member for Friends of Haleakala maybe he could speak for Don Reser or other members of the Board there with regard to specifics on the relationship between Science City and the National Park because he had thoughts that they did not have the perfect neighbor relationship, but they at least had an amicable one. Mr. Raymond said he would say the relationship is amicable, but the Friends of Haleakala

National Park have come up and said they do not believe that this is an appropriate structure for the top of the mountain. The staff looked at 1800 pages of testimonies and took 60 days to do it they did not do a very good job at relating to the Board the perspective of Native Hawaiians. There will be Native Hawaiians who would say staff did a great job. He is representing Kilakila 'O Haleakala where overwhelming number of Hawaiians are proven to be against it by the supplemental cultural assessment. The entire State Hawaiian Civic Clubs testified against this.

Member Gon asked to characterize the membership of Kilakila 'O Haleakala. Mr. Raymond said they are a Board of two, faculty members of the University which are himself and Mika'ala Helm, the former vice-president was Ed Lindsey who has passed away whose wife and son have joined and Leiohu Rider are members. They sell t-shirts to fund their organization.

Member Goode said he knows it's difficult for Mr. Raymond and appreciated him opening up with his testimony, but he mentioned the lack of stewardship, malama aina, and asked him to touch on a few examples. Mr. Raymond explained that the father of radio astronomy was given to a fellow named Reiber who set up experiments to find whether radio astronomy would work. He had concrete circles set up and they are still there. Now it's a historical site for astronomer, but it should have been cleaned up a long time ago. When they go there it gets harder for him to go there because he is envisioning this structure that will be 80 feet away from what he is allowed to pray, but they are going to take that away and only allow him to pray at the woman's site which is appreciated, but it's not Hawaiian religion. When you go to these places within the HO and he understands that there will be disagreement that the IFA would argue that they have been good stewards, but its Mr. Raymond's opinion that it's messy that you don't leave your mukaki and clean up your mess.

Ryan Swindle, a graduate student at the Institute for Astronomy at U.H.-Manoa testified in full support of the ATST located atop Haleakala. He is one of many graduate students who use the telescopes atop Haleakala for professional research ranging from solar astronomy to night astronomy. His interest is in instrument development specifically instruments to study the sun. The ATST would provide research for scientists for many years to come and future engineering technology depends on this. Engineering technology is something that the community needs and all the researchers around the world will depend on this facility. Mr. Swindle can provide testimony for the education outreach capabilities of the ATST because he is also a teacher with the Akamai work force initiative which provides local college level students with high tech positions with observatories and local industries. They provide dozens of students with internships each year and ATST will contribute to this program as well as other similar student research programs such as the NSF. Mr. Swindle supports the development of this project.

Jeff Coon, a scientist and resident of Kula, Maui testified that he is responsible for the IFA on Maui. The ATST was in the works since the 1970s and he moved to Hawaii because of this project. It took members of the scientific community from 5 different countries and met for over 2 years to look at the data. The conclusion was that Haleakala

is the only place in the world that you could build an instrument where you could see the connections between the sun and earth. It is the first time since Galileo that they could make measurements with a magnetic connection between the sun and the earth. This is the most expensive instrument that looks at the optical in the infrared which would be bigger than any telescope on Mauna Kea. Global warming isn't just about CO2. Civilizations came and went because of changes that took place in the sun and this is to understand the interior of the sun and how it works. Like knowing when a hurricane is coming we would like to know to be prepared. We can't say whether 10 years from now whether the sun will be 3/10ths of a percent brighter. We know it will be a tenth of a percent brighter which we can handle, but the climate of the sun is not predictable right now. This is not just about the University of Hawaii and IFA. It's something that has been in the works for 30 years and the whole world has been involved to do what they have to have it do. It's a big deal.

Mike Kido representing Pacific Resource Partnership testified that they are in support of the project as described by the last speaker from the University of Hawaii. He reminded the Board that they are looking at the project in a macro sense and as cultural development and asked for the Board's favorable consideration.

Paul Coleman, an Astro-Physicist at the Institute for Astronomy and he has ancestral ties to Ka'anapali although he doesn't live on Maui. He speaks from the perspective of a scientist who is also Hawaiian who sees what possibilities are available in bringing this telescope to the HO. The NSF did an unprecedented move by granting a mitigation fund to be handled by the Maui College reiterating the amount of the grant. The social hurts cannot be mitigated not by something that is sacred, but some people find things annoying and those people we should try to have them feel better. They are trying to develop teaching programs that spread a wide net across the State to get more children involved in hi-tech fields. The director of the NSO offered to provide them a list of jobs before they become published to develop those children for those jobs when they become available. The NSF recognizes the deep cultural significance of our mountains. If all the telescopes in Hawaii disappear it wouldn't change his job at all because astronomers go where the telescopes are and return with the data, but it would eliminate the possibility for futures of children who are interested in science and engineering. Those mountains are our ancestors and they are a gift to us and to our children. There is no dust and it's above the inversion layer on a smooth shield volcano. Mr. Coleman is in favor of the ATST.

Member Gon asked whether there were any details in regards to the mitigation fund from NSF on where that is suppose to go and who is suppose to administer that. Mr. Coleman said it's supposed to be an open solicitation, but it's not really open. It's directed to Maui College as being the primary including [Keeki]Kiope (Raymond) and his groups. They tried to include as many different groups into this program and hoped it won't be another stem initiative to get Hawaiians into the science, technology and engineering fields, but in fact will be something to support Hawaiians in Native Hawaiian studies. Any program that we feel could help to gel the community.

Member Gon asked whether some of that mitigation fund could be used partially to deal with some of the physical and cultural mitigation aspects that have been brought up. Mr. Coleman said he would think so and that is why they have been in discussions with [Keeki]Kiope (Raymond). Mr. Coleman looks at this as a way to make a difference and they could go a head and not do anything or 10 years from now they could not have a single Hawaiian electrician, observer, educator or scientist up there, but it would be really nice that 10 years from now have at least half the people working up there are Hawaiian.

Member Gon said the point was made earlier that whenever it comes down to dealing with the impacts of the past that it was always somebody else's problem that we didn't cause that and didn't need to deal with that. You get the impression that any of the impacts that you see currently there is no existing fund or means to implement that, but your mention of the \$2 million dollars a year for 10 years program suggest there might be a source of mitigation for dealing with some of those long standing things and that may or not be the case because we haven't see the details of this proposal. You mentioned it may deal more with other efforts to bring local students into astronomy which he wanted to get clarification on. Mr. Coleman said he isn't sure of the parameters. He didn't think they can build a building when there are certain rules that go with the grant which is being worked out as they get closer to a version that they can submit.

Chair Thielen asked who at the University is the controlling entity over the grant or has the authority. Mr. Coleman said this would be coming from Maui College so he assumed the PI would be Clyde Sakamoto and there will be co-PIs.

Leonard Hoshijo representing the Hawaii Carpenters Union testified that they are in support of the Management Plan and the CDUA. A couple of their members testified earlier which he noted the 60% unemployment on Maui and the duration is years. The Carpenters Union supports this and also gets involved in educational programs, children programs, substance abuse, public policy matters because they consider themselves part of the community. First step is workers need work, children need medical plans, families need to stay in their homes where public policy and community concerns are a major part of their coming up with their position. Mr. Hoshijo suggested the Board take the full range of the process and that a balance has been reached with cultural, educational, environmental that can be worked out over the years. The EISs have been done. We can diversify this State and this is an example. The timeframe is important because one delay will cause longer delays and deadlines missed. He is nervous about the Federal funds because of the current climate in D.C. They urge the approval of the staff's recommendations.

Member Morgan said there were comments that people were hand picked to stack the deck in favor and asked whether all the people listed in the submittal were consulted. Mr. Lemmo said he hasn't independently verified whether or not those people on that list were separately contacted. He couldn't say that he had.

Member Gon wondered about the compliance to the conditions and that is always the stickler that conditions are placed on permits and the recommendations are made in

regards to compliance on conditions and those conditions stem from those indemnified from the Management Plan or make reference to them. The question to the implementers to that Plan on how they condition that compliance occurs and how it can be monitored and reported on. He asked who in this room would best be able to answer that. Chair Thielen asked who from the University would be the point person for the implementation of the Management Plan. Mike Maberry said the person ultimately responsible is the director of the Institute for Astronomy and Director Rolf-Peter Kudritzki is here, but he will be replaced January 1 with a new director. Member Gon rephrased his question asking how he envisions the conditions of the implementation of the Management Plan and the permit to be realized. Mr. Maberry said they are separate. The Management Plan could be passed by this Board and could go into affect even if the Board didn't pass the CDUP or even if they don't get a permit for the ATST. The University would still use that tool, the Management Plan for managing the entire 18 acres under their responsibility. It is comprehensive that all the area that under the University's responsibility would be managed per this Plan. Chair Thielen clarified that the question is how is the University is going to implement the matters that are in that Plan. Mr. Maberry apologized and said there is an annual report that the University will reply back to DLNR. Member Gon asked then that annual report will be put together by the University and at that time for anyone to report supplemental observations. Mr. Maberry said at anytime there is always the opportunity for people to report to OCCL if they perceive there is a violation of conservation district use regulations or conditions of permits or conditions on the Management Plan.

Member Goode asked Mr. Lemmo that it is his understanding that any violations the Board considers a breach of the permit will be a pull of that permit and Mr. Lemmo said as to the CDUP, the ATST the permit is voidable if there is a failure to comply with conditions. Member Gon said at least if no solution is found for the violation and asked whether there is a time period or do you violate your own. Mr. Lemmo answered in the negative and said it depends on what the violation is but is saying at the extreme end of the situation you have the authority to revoke a permit for egregious type violations.

Chair Thielen asked for clarity whether the Management Plan is a not permit and it is not per Mr. Lemmo. The Chair said some of those actions that the Board can take relating to permits would apply only to the application in front of us on the solar telescope. The Management Plan required under our rules is a guiding document which this Board is asked to approve whether it meets the criteria in our rules to be guiding document and the University is saying in the Management Plan that they would use that to guide future activities on the mountain. There would be an annual report back to the Board on the Management Plan under what is being proposed. Since that is not a permit for the Management Plan she wasn't sure what action the Board...it could have dialogue with the University on the implementation during the annual report process, but how it might come up in the future is if there are future CDUP applications for future projects or modifications of existing projects on Haleakala the Board would be taking a look at the Management Plan to determine whether things are being done in compliance.

Member Gon pointed out in staff's recommendation item #10 which he read and said that is the direct link between the Management Plan and the permit. Mr. Lemmo said on the staff level they tried to tie it all together and have an accountability clause. Not only in the CDUP for the ATST, but in the Management Plan condition #2 has specific annual reporting requirements. They have to report to us via status implementation of various efforts including the HCP, the plan for invertebrates, flora and fauna, the programmatic agreement which was talked about today and staff would like to know what they are doing with \$20 million dollars and other things. They will have the information and the burden is on staff to decide whether the annual report is adequate or something that needs to come back to the Board to seek revisions.

Member Goode said in the currently written condition it's to report to the OCCL and not the Board. Mr. Lemmo confirmed that. Member Goode said it maybe something they could look at amending or maybe asking every first one and then every 5 years thereafter. There are concerns where we might not be here that the community is asking for more oversight on the Master Plan, but this is a good first step for the Board to look at. Mr. Lemmo said there is no requirement at this time to report to the Board. The Chair said that could be something the Board could do if it wants. Member Edlao said the Board should at least have a briefing to have some continuity and transparency.

Member Agor said after reading all the material and talking with people he can support moving forward with staff's recommendation.

Member Gon said he wasn't quite clear on precedence questions on the contested case that David Frankel made earlier and he made a motion to go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Morgan seconded it.

11:12 AM EXECUTIVE SESSION

11:47 AM RECONVENED

Chair Thielen said there was a question from the Native Hawaiian Legal Corporation about whether this Board has to put this matter into contested case as soon as we receive a request and that we cannot make a decision. Based upon advice of our counsel and past practice there have been times when the Board has done that, voluntarily place the matter into contested case prior to making a decision, but that is not required under our rules. There is certainly a significant amount of practice where this Board has made a decision upon receipt of the request for the contested case placed it into the contested case after the decision provided that the party requesting has standing to make that request. That is the discretion of the Board to decide. And after further discussion with other legal issues she called up the representatives of the University of Hawaii because the Board would like information on the mitigation on the impacts to cultural resources that are in addition to the mitigation addressed in the EIS document. The Chair summarized they are looking

for information about the mitigation on the impacts to cultural resources, but in addition to the mitigation that is contained in the EIS for the CDUA for the solar telescope.

Mr. Maberry said in addition to the 10 items provided in testimony yesterday he will go through those items. The ATST Native Hawaiian Working Group (NHWG) established by the National Science Foundation is part of the mitigation in the programmatic agreement which was outside and was not mentioned in the FEIS. As he mentioned earlier in his testimony today that the ATST NHWG will meet twice a year and has met 3 times since its inception. The NSF encourages the group to discuss and evaluate cultural mitigation measures that can be introduced during and after the workshop group meetings for the on-going process of construction which could take as much as 7 years. Through the cultural monitor that the ATST would hire to oversee the project would be part of the NHWG and work closely with them where things shared during the process or might be identified during the process could be discussed among the NHWG members and they could propose additional mitigation that could be implemented during the 7 year construction period and also the Group would continue to provide guidance and support to the NSF during the operational phase.

Member Morgan asked to describe the make-up of the Group. Mr. Maberry said every person who attended a Section 106 meeting who provided contact information was placed into a data base. Every time this Group meets the NSF sends out information to every one of those people. Native Hawaiian is self identified - its broad and whoever shows up to participate does so. Member Goode asked since he mentioned that the NHWG met 3 times and they've already suggested additional mitigation measures. Mr. Maberry confirmed that they have, but not all have been adopted. He related #2 which is a shelter for cultural practitioners. The summit of Haleakala is where 1.2 million tourists visit a year and it was shared with him that it's difficult to go to the summit of Haleakala and have a private, personal experience especially if you wanted to wear traditional dress or do hula with all the cameras around which is one of the reasons to work toward providing signage or making Native Hawaiians aware that the site was available for these type of activities. One of the concerns was to go up at sunrise and calling for the sun with "E Ala E" and it's very cold where lilinoe is hovering above the mountain with the moisture, wind and cold it makes it difficult waiting around for the sun. It was expressed it would be great to have a place of shelter for the children and cultural practitioners can get out of the weather and have access to restrooms and water because with the high altitude the possibilities of dehydration is very high. This #2 came out of that consultation where the NSF is working with the University and the Group. The February NHWG field trip will be looking at the site and the buildings to decide where the best place is to implement this recommendation.

Member Morgan asked whether this is within the 18 acres. Mr. Maberry confirmed that all the University activities stay within the 18 acres.

Chair Thielen asked whether the NHWG and the commitment to working on identifying cultural mitigation measures over the 7 year construction period is in the programmatic agreement and Mr. Maberry confirmed it is and the NSF oversees that programmatic

agreement. The Chair said they went through a similar programmatic agreement with the rail project to have proposed mitigation for an on-going group to be identifying future impacts for the term of the project for a set period of time and it was her understanding in that draft is it's non-discretionary. That group that would be in place in the programmatic agreement the Federal agency who oversees that agreement is responsible for ensuring that those things identified are implemented, it's mandatory under the programmatic agreement. She asked is this the case with the NHWG, is the University of Hawaii mandated under the programmatic agreement to adopt and implement the mitigation on the cultural resources that are identified by the NHWG. Mr. Maberry said that the University of Hawaii is a signatory on the programmatic agreement, but it is the responsibility of the NSF. Chair Thielen clarified her question that if the signatory parties to that programmatic agreement agree to the mitigation identified by the NHWG then is it mandatory for the University to implement it. Mr. Maberry acknowledged that.

Mr. Maberry said that the road going to the summit of Haleakala where a major portion is State road 378 until it reaches the National Park. There is commitment from the NSF to provide funding for assessing historic culverts and bridges associated with that stretch of road. #4 – Acknowledgement of the significance of Haleakala and NSF's gratitude which relates to papers that will be published from data taken from the ATST where all those papers would have to have a statement acknowledging the cultural significance of Haleakala. Status and implementation of the programmatic agreement recorded on the project's website which has already been implemented and is available at the website listed so that anyone can monitor and verify the conditions agreed to in the programmatic agreement are being adhered to. #6 – During the scoping phase of the ATST, Native Hawaiians expressed concerns about the loss of view planes caused by previous construction at the HO. This relates to what he mentioned earlier about the difficulties of finding a place for cultural practitioners to have privacy. He recognized that some (areas) may not be ideal and he understands and appreciates that it was a level of effort that they could best provide. They found a site in consultation with Kahu Maxwell and Nathan Nakoka who at the time was with State Historic Preservation (SHPD) and walked around the site and identified a view plan that was available from Pu'u Kolekole to the west that oversaw the channels between Moloka'i, West Maui, Lana'i and Kaho'olawe was expressed to Mr. Maberry that was a significant view plane. This is an action done by the University of Hawaii associated with these consultations where they retained the Native Hawaiian freestone mason that was recommended to them by State Parks where their crew came to the summit walked around with Kahu Maxwell, looked at the area and developed an ahu and over site to the ahu that provides an opportunity to go down off the side of the pu'u where you have lava stones behind you with the view plane before you. During construction of that west facing ahu in consultation with the masons discussing the potential of the ATST they asked the University to show them the area where the ATST was being proposed for construction. They walked around that area, looked at it, looked over to Mauna Kea and discussed the connection between Mauna Kea and Haleakala because of Pele having lost in a battle with here sister where Mr. Maberry apologized if he didn't get that correctly and Pele going to the Big Island being resurrected in a sense as a spirit and there is that connection between Haleakala and Mauna Kea from that stand point, but also from the stand point of the connection of

astronomy. The masons recommended that the University be pro-active instead of reactive where they were reactive by arranging to have the west facing ahu constructed and they recommended being pro-active and having an east facing ahu constructed. Also, that would tie in to Haleakala better because of the ceremony of the sun where the west facing ahu you can't see the sunrise. That was mitigation that the University worked toward for a gift of friendship and hoped for positive consideration for the ATST.

Member Edlao asked whether the ahu was completed prior to the EIS and Mr. Maberry acknowledged it was which is a mitigation undertaken by the University and not by the NSF.

Member Goode asked about earlier testimonies regarding access control. Mr. Maberry explained that the University had established a set aside area for the west facing ahu and it also encompassed a historic site #5440 which is an ideal area as much as one can have within their EO because of the way the site is inside the pu'u. It's a site where you can get parking and you can gather a good size group of people. That was part of the set aside which is right off the road which is the only road that goes through the site. The east facing ahu you would park in the main solar observatory parking lot and walk next to the building to the edge of the pu'u to the ahu. We didn't undertake a set aside for that at that time because they wanted to wait and see what the best, safest access may be should the ATST be constructed. We discussed with the National Solar Observatories about this issue and it would be something we would address in the future and would consult with the ATST NHWG in order to establish at an appropriate time. At the moment it is accessible and there is parking. There is an identified trail where most of the people coming up know where they are going and nobody interferes with people having access. Mr. Maberry agreed that there would be temporary issues with regards to access during construction because of safety, but that's what the cultural monitor would be responsible for addressing if it became necessary to stop construction or arrange for an alternate access. It is something they take very seriously.

Mr. Maberry reported the net recovery benefit of the Hawaiian petrel or 'ua'u because some Native Hawaiians consider the 'ua'u an aumakua the development of the Habitat Conservation Plan accompanied with the incidental take license is an acknowledgement that the ATST construction would result in a loss. Under Federal law that you'll only have to show an even break with regards to impact on an endangered species, but under State law you have to show a net benefit. What will be coming before the Board in the next month or so will be a Habitat Conservation Plan that will have a major net benefit to the nesting colony that is around Pu'u Kolekole because of the fencing project that is being proposed that will surround an area outside the University's 18 acres that Forestry is working closely on. The Chair asked whether that mitigation is included in the EIS – the Habitat Conservation Plan and impacts to the petrel. Mr. Maberry said, after he spoke with Dr. Charlie Fein, that was after the EIS in consultation with DOFAW and U.S. Fish and Wildlife the development of the Habitat Conservation Plan. Chair Thielen acknowledged that and asked but the impacts on the petrel and the fact there would be a Habitat Conservation Plan that is in the EIS correct? A lady spoke saying yes, but the

extent of that recovery is the extent of those measures taken and not in the EIS. The Chair says the EIS requires it to be done.

Mr. Maberry said the NSF agreed to fund the project to characterize the cultural and historic resources within the approximately 328 acres surrounding the HO that has been designated as a conservation area for the ATST. The archaeological, cultural and historic resources within these unencumbered State conservation district lands have not been surveyed for these resources therefore an inventory and characterization of features eligible for listing in the National Register of Historic Places would provide the Native Hawaiians with important information about the uses of the summit area for traditional practices. This is the same area considered for fencing where they would then go into the area and then characterize it. #10 – Mitigation #9 in the FEIS lists a requirement by U.S. Fish and Wildlife Service to restrict construction noise at petrel burials and truck traffic during petrel incubation periods, April 20 to July 15. Later consultations with Fish and Wildlife and DOFAW for the HCP concluded that eliminating the 3 months of noise and traffic restrictions each year would shorten the overall time needed for exterior construction and thus reduce the potential for incidental take. The construction schedule for the ATST was revised for the HCP by approximately one year shorter than what was shown in the FEIS. In particular, the 3 to 4 years of the exterior construction with its maximum noise traffic and other disturbances which OCCL staff report indicated would have the most adverse impacts on cultural practices, page 19, has been reduced by about a year. #11- Adoption of the Programmatic Agreement and the Management Plan is a commitment of the University of Hawaii and NSF to the mitigation measures outlined therein and provides concrete insurance that the additional measures will be implemented. In view of the mitigation measures described above and in the FEIS Programmatic Agreement, Management Plan and Habitat Conservation Plan the ATST Project will not cause a substantial adverse impact to existing cultural resources within the surrounding area, community or region.

Member Gon asked to clarify whether the \$20 million dollars over a 10 year period mentioned earlier has anything to do with the HCP. Mr. Maberry said it does not. That was separate. The measures associated with the HCP and the cataloging of the area for cultural sites would be funded separately which has been secured by the NSF in addition to the \$20 million.

Member Morgan asked to clarify that all these items Mr. Maberry had mentioned was after the EIS referring to the east facing ahu where Mr. Maberry said he wanted to clarify it wasn't mentioned in the FEIS because it wasn't a mitigation undertaken by the NSF and was mitigation undertaken by the applicant, the University of Hawaii, IFA. The Chair said it was in addition to the EIS with the exception of the HCP which Mr. Maberry confirmed.

Member Gon asked whether one of the two ahu would be affected by the construction. Mr. Maberry said he is only repeating what was shared and said perhaps the ambience would be affected during construction and to some extent maybe during operations because of increased noise. As for disturbance to the actual ahu under no circumstances

or the area where people can collect because there is a rock outcropping behind the ahu that area would not be disturbed in anyway physically.

Member Morgan said he isn't sure whether Board member Agor still feels the way he feels that after listening we have several choices before us and there has been a lot of testimonies. Clearly, there is conflict within part of the Hawaiian community and he doesn't think there is anyway they can get around that conflict. Member Morgan likes the reference and acknowledgment of spirituality can occur anywhere which is an important concept and would support passing the Management Plan and the CDUP.

Member Gon said it is an interesting point to me that while we were in Executive Session we went over the items that allow us or don not allow us to permit various uses in the conservation district. Item 4, we cannot move if those items cause substantial adverse impacts. The EIS stated that they did and this is why we brought you (applicant) forward to outline the points or the actions that have been implemented as a result of the acknowledgement of those impacts and he thanked them. It's up to the Board to figure out whether or not the mitigative actions are sufficient to deal with those acknowledged potential adverse impacts.

Member Gon asked this is what he asked with Mauna Kea, what thought has been given to decommissioning processes and removals of outdated or otherwise inactive structures in the HO? Mr. Maberry said that is one of the mitigation measures that are proposed in the FEIS that after 50 years the ATST would be decommissioned and deconstructed. On Mauna Kea, the land is leased from DLNR to the University of Hawaii. What was suggested earlier wasn't entirely correct that the Governor could rescind the EO for this particular EO property. The University has and is reusing our facilities. There aren't any buildings on our site that is not being used for scientific purposes. Advances in technology come about very rapidly and they have opportunities to upgrade their instrumentation reusing facilities' for that new technology. If there is an opportunity to upgrade a facility they will come back before this body.

Member Gon said he looked through the material on the cultural aspects of the region and the site Pu'u Kolehaha and did not see anything specific to that particular pu'u and asked whether ~~[Keeki]~~ Kiope would offer a brief mo'olelo ano kela wahi pana (story of this celebrated site). They spoke in Hawaiian whether to present in Hawaiian language or not. Where Mr. Raymond thanked the Board and related what he said to Member Gon and thought it would be in the best interest of the Board to speak in English. The summit area specifically Kolehaha he acknowledged there is a tremendous amount of mo'olelo leading up to Kolehaha. The National Park does a wonderful job of interpreting to Hawaiians historic truths of the demi-god, Maui and his connection there. He would reference the Board rather than the most known story of the demi-god Maui standing on the top of the mountain with one foot on Hanakauhi and another on Kolehaha as he snared the sun using the coconut fibers that he gathered from the Waiehu area. Maui gathered the sennit and made it into the cordage according to one story and slowed down the sun harnessing the energy. Rather than that one interpretation of the story he would refer the Board to the supplemental cultural assessment that was created in 2007 which is

Cultural Survey Hawaii's broad and deep research into it. In fact, there are some things that are lacking where there is no reference to the mo'olelo (story) of La'iekawai one of the epics of Hawaiian tradition that has the lover Kanohiokala which translates to eye ball of the sun taking his lover La'iekawai on a rainbow to the middle of the sun. Hawaiians incorporated the sun into their understanding where many Hawaiians of today have been disconnected for so long are now reconnecting to. You can listen to the applicant say we came to the Hawaiians and met 30 times. From a Hawaiian perspective we went to those meetings and begged 30 times – don't do this. This is so culturally important and yes, you have the lease for 18 acres and yes, you have your long range management plan, but it's about time for not just the 18 acres but the entire summit to have a long range comprehensive management plan, two very different things. When Mr. Raymond listened to the 10 points of the cultural mitigation it doesn't take away his pain and in fact increases it. He is not a Pele practitioner, but if you are going to move thousands of cubic yards of Pele (molten rock) to a practitioner that is a desecration. It really hurts. If you look in the Hawaiian dictionary under the word ua'u and you will find an aumakua. How do you mitigate the death of an aumakua? You kill 36, hopefully not, but you give back by growing 37 more. That is not right to take away possibly someone's ancestor. How do you mitigate that? Build all the fences you like.

Member Agor asked whether the Board is taking Items K-4 and K-5 separately and the Chair confirmed that. She said that K-4 is the request to approve the IFA's Management Plan for the High Altitude Observatory site.

Member Gon said that management plans provide the basis for assessing conditions. If I were going to be in favor of one of these two it would be the Management Plan so they could move forward from that. The permit is for more specific set of things and that is one the set of conditions and mitigating actions is harder for him to deal with, but he is ready for a motion.

Member Goode made a motion to adopt Item K-4 Management Plan, but amend condition #2 that the report also be submitted to the Board for the first report, at a minimum every 5 years thereafter. The way the conditions currently read is it's simply a report to DLNR. He is revising condition #2 on page 14. Member Gon seconded that. The Board voted in favor of the motion.

Chair Thielen summarized that the Board has accepted with amendments the staff recommendation to approve the Management Plan for Haleakala.

The Board:

Amended item #2 on page 14 of the Management Plan to come back to the Board with the first report and a minimum of 5 years after, otherwise, the Management Plan was approved.

Unanimously approved as amended (Goode, Gon)

Item K-5 Conservation District Use Application MA-3542 regarding the University of Hawai'i, Institute for Astronomy's Advanced Technology Solar Telescope at Puu Kolehale, ahupuaa of Papaanui, moku of Honuaula, Makawao District, Maui, TMKs (2) 2-2-007:008; 2) 2-2-007:007. *Submittal to be distributed.*

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Chair Thielen said Item K-5 is for the CDUP for the ATST.

Member Morgan said he is accepting the fact of the differences of opinion that you will never have consensus on everything and he is satisfied with the additional mitigation efforts that the applicant has in addressing some of the issues in the EIS. He made a motion to accept staff's recommendation. Member Goode seconded it for discussion.

Member Edlao said being born and raised on Maui it's a very difficult decision. I respect the cultural aspect and spiritual aspect and not to be disrespectful at all, but he believes this project will benefit the living now and that concerns him the most. No disrespect to the aumakua and everything else. He can support this motion to approve because there will be a lot of benefits to the community.

Member Gon said he appreciates the developments and the knowledge gained by astronomical efforts and the resource of both Haleakala and Mauna Kea represent to the astronomical community, but he would have to go with his gut on this to defer the motion.

Chair Thielen said one of her concerns was the impacts of the cultural resources identified in the EIS. She looked at the information the University provided about steps that had been taken in addition to the mitigations proposed in the EIS. Given her recent experience in dealing with programmatic agreement negotiations on the rail they worked with the National Council on Historic Preservation and discovered there were situations nationally where there were some large scale projects that there maybe on-going impacts to resources that were hard to predict and identify. Or maybe was so complicated it couldn't be fully sorted out prior to the project going through and in those cases they did develop on-going working groups, a requirement under the programmatic agreement, and a structure which allowed continued consultation and negotiations and if the signatory parties agreed requirements to implement any future mitigation identified. She feels better that is in place and that everyone who participated in the programmatic agreement may continue to participate in the NHWG including some of the people who came to testify today and many others who couldn't make it. The Chair said she would feel better if this Board received reports on the progress of that as well because that is something the Board should be informed of and also something to guide possible future conditions in other projects. Looking at the last sentence of condition #7, she suggested striking it and

replace it with "The applicant is committed to continued mitigation of impacts on cultural resources within the region of impact and will report annually to the Board in writing on the status of the implementation of the programmatic agreement including listing any proposed mitigations to the impacts on cultural resources developed by the NHWG, the response of the signatory parties to the programmatic agreement on those proposals and the implementation of any such measures by the University of Hawaii;" Chair Thielen summarized the Board would get an annual report which would include has the NHWG proposed mitigation, did the signatory parties agree to that or not and what implementation has been done during that seven year construction period while the NHWG is continuing its efforts for identifying on-going mitigation.

Member Morgan agreed and happily amended his motion to include that. Member Goode seconded that saying that is a great idea. It was one of the questions he asked Mr. Maberry whether the NHWG has convened, made suggestions and had been incorporated. The way it was written the NHWG could suggest, but the applicant will go look at it and that is not good enough for him either. The language the Chair suggested hits the nail on the head. It requires the University to listen to the NHWG which is inclusive as possible and it sounds like there is a commitment to that. He is in full support of that motion. In general, does this meet the eight tests in the report the Board got from staff and with the additional information they got today specifically on the NHWG and the programmatic agreement, the issue about the view planes where considerations have been made for that. We have met the test as it relates to the criteria for the issues of the CDUP. Member Goode is voting in favor of the application and conditions has been approved.

Chair Thielen asked the applicant whether the amendment was acceptable to them. Mr. Maberry acknowledged it was.

Member Gon asked for clarification on that particular amendment because he knows for a fact a year from now he has a hard time figuring out the precise details of the decisions that we've made and the precise conditions we've put on. Who will make sure that happens on the State's end? OCCL? Mr. Lemmo said correct and there is a condition in the Management Plan for reporting annually which was amended where the first annual report comes to the Board and then the fifth comes back to the Board. Since we are dealing with the whole 18 acres on that particular case this will be part of that monitoring the report element. In addition they have given staff something specific for the CDUP. Chair Thielen said that what is being proposed here is it becomes a condition on the CDUP.

Member Gon said it lies with members of the public here to remind this Board of what they recall from this meeting when the time comes.

Mr. Frankel asked whether they will be allowed to make their case. Chair Thielen said she assumed that his petition for a contested case is on the record and that they will follow up and that this is Board discussion.

Chair Thielen asked for the vote where all the Board members voted in favor except for Member Gon who opposed. The motion passes.

The Chair said for those who want to file for a contested case hearing to make a request verbally prior to the end of this meeting and file a written request within 10 days of today's meeting. Mr. Frankel said they've already filed their petition.

The Board:

Amended staff's condition #7, by striking the last sentence and replacing it with "The applicant is committed to continued mitigation of impacts on cultural resources within the region of impact and will report annually to the Board in writing on the status of the implementation of the programmatic agreement including listing any proposed mitigations to the impacts on cultural resources developed by the NHWG, the response of the signatory parties to the programmatic agreement on those proposals and the implementation of any such measures by the University of Hawaii;" Otherwise, staff's submittal was approved as submitted.

Approved as amended (Morgan, Goode)

Item J-1 Request for Approval to Initiate Rule-Making Proceedings Regarding Amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Parts I, II, and III, Hawaii Administrative Rules

A number of written testimonies were distributed to the Board.

Member Morgan recused himself.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reported that staff came before the Board September 9th with an extensive rule amendment package that the Board approved to go to public hearing. During that meeting there were several rules that they received substantial testimonies on. Board member Agor agreed to go out and meet with the Hanalei Bay community as well as our Department of the Attorney General representative and County of Kauai's court counsel [met]. Staff was also asked to gather information and input on the dormant vessel rule which requires a boat to move once every 90 days. Subsequent to the meeting staff decided to break the package out into a smaller package so people can focus on it. Staff came up with a package that has the least controversy with the rules. Those being the Hanalei Bay rules, the Kaneohe Bay rules, the rules dealing with the ACLU and the rule dealing with the grace period for someone for inadvertently failed to renew a mooring permit where that rule was changed substantially and the Hanalei Bay rules were clarified thanking Member Agor. Staff is asking to move forward with those. On the grace period rule, there was a lot of discussion and they now feel it will work. One of the issues was if you failed to renew your mooring permit staff would allow an automatic grace period, but the question was what the time frame should be for that grace period. There was input of 10 days to 30 days. Staff wants to ask the Board to determine that number here. The Hanalei Bay rule package is basically the same except for grammatical changes. This is

the first time in a long time where they had the most people buy into, receiving a lot of testimonies. The ACLU rules remain the same. The primary one is the parking issues. Another rule he got testimony on dealt with the personal partners in the harbor which tells you where you can have a person living aboard a vessel. Primarily in the Ala Wai small boat harbor and they have people living on their vessels along the break water which the rules says you can't have and they will have to change it, but within that rule says we shall issue live aboard permits when they become available recommending changing the word "shall" to "may" because staff would like the ability that they may not want to issue up to [a] 129 live aboard permits for any particular reason. It could be a management issue, they could run commercial boats in the harbor...who knows what it may be, but they would like the ability to be able to decide when and how many up to the Legislative directive where that is in the rule as well. Staff is asking the Board the 2 rules that were amended were the Hanalei Bay rules and the grace period rule to accept those revisions. The other rules in the package have already been approved to go to public hearing, but staff included them to show that this is the package they wanted to go forward with, to grant staff to move forward with the rule making process and for the Chair to assign the hearing officers.

After Member Gon's query that this is a request to go to public hearing which Mr. Underwood confirmed that this is to begin the amendment process by going to public hearing. Member Gon noted that the Board today will not be making any decisions on any details of the rules here. This is what has been presented to the Board and are being asked to take it to the public. It won't make sense to hear a lot of details on these particular rules here because that would be better for the public venue. Mr. Underwood said that a majority of these have been approved for public hearing at the last Board meeting on this, but staff is asking the Board how long the grace period is because that number was left blank in the rule for staff to fill in, HAR§13-231-5(b).

Harrison Kawate representing Senator Ron Kouchi testified that the Senator supports the action to allow the proposed rules to go out for public hearing, mainly the Hanalei rules.

Terry Conlan testified on the importance and timeliness of the grace period item because people are being kicked out of their homes and related that he is the most recent victim after waiting for many years to get a slip and prior to that he was offered a live aboard slip where he was in contact with the office and they told him they would get back to him because they were very busy and that they would call him to get information to complete the live aboard. Each time he went in he always asked whether there was any more that he needed to do and staff would always say no, that they would call him. Some weeks after his renewal date they called to say they could not give him the live aboard because he had not renewed his slip. Mr. Conlan was under the impression that they were doing that, discussing it and that there wasn't anymore for him to do. Now he has lost his slip. The rules do not address the reasons why someone should be allowed to stay. If given a grace period for applying to get the slip back or keep the slip before it's removed, but there is no provision in the rule on what you can or cannot do because he asked the harbor master whether he can rectify this and he said you could write a letter to the District Supervisor which has not been acknowledged to this day, but he did get a notice

to vacate immediately or have his boat taken away. Extending this 15 days would not solve his problem because this was a misunderstanding issue and not a timing issue and there should be some provision to address that. Mr. Conlan read HAR§13-231-6(a), Revocation of Use Permit and said that is a reasonable provision where the harbor master has to notify Mr. Conlan that he is going to take his slip and give Mr. Conlan a reasonable time to fix it before it is taken. The current proposal doesn't provide for fixing it and Mr. Conlan suggested using this wording than what is currently being proposed. The only reason he lost his home was he didn't sign a piece of paper on a timely basis, but he met all the other conditions. Now he is told to vacate the space or have the boat taken away and that isn't fair or reasonable. He asked the Board to reject this rule.

Dave Cooper who lives at the Ala Wai Boat Harbor testified that he had no problem with this item moving forward, but the reason for not supporting this is it doesn't cover all the items and those other items are hidden away. Mr. Cooper said it's a problem with transparency and credibility which he can't support. A cleaner package would prevent more contention. Mr. Cooper said to reject the whole thing, clean it up and come back with the items on the Executive Summary or go through his written list of items, revise, clean it up to proceed with the Executive Summary that was published.

Bruce Lenkeit, an Ala Wai boat owner testified recommending the Board look at Dave's comments because he was appalled. The four items on the summary Mr. Lenkeit supports 100% where he referred to Mr. Conlan's and Bernard's case and the ACLU suite which is Mr. Lenkeit's. He tried to living with his girlfriend and the Department said no. There are people where a parent died and wanted the widow to stay with a family member on the boat and was told no. Mr. Lenkeit said that the summary was not rendered in good faith where he related lobbying and talking to legislators who denied DOBOR's measures because they are quite disgusted with trying to dupe the Legislature and now the Board is being treated the same. He reiterated the suggestion to read the Executive Summary because of all the fee raises. There are close to a 100 vacant slips that aren't filled. Mr. Lenkeit related a criminal case where the owner is on the live aboard list and was cited \$50.

Member Goode asked whether he suggests sending out portions of this – Hanalei, Kaneohe Bay. Mr. Lenkeit acknowledged that and the ACLU one as long as staff sticks to what is in the summary. There was some discussion regarding the summary. Member Goode said the recommendation is to go to public hearing and Mr. Lenkeit suggested saying no and asked to have staff write a proper document to go to public hearing referring back to Mr. Cooper's written document. There was more discussions regarding the summary details of what is or isn't in there. Chair Thielen noted that is why the draft rules are provided. Mr. Lenkeit said he only learned about today's meeting yesterday and the Chair said that staff can show him where it's published on the website.

Janet Mandrell testified that September 9th was the last time they met on this matter and she asked whether the agenda item was a procedural matter that was predetermined to pass and she was told that was impossible. The next day on September 10th the

newspapers statewide appeared a legal notice announcing the public hearing meeting and dates and places that someone was confident that the Board would pass that package. The agenda item was amended and unanimously approved directing DOBOR to hold the additional meetings at Ala Wai, Hanalei and the public hearings were supposed to be held at Hilo and Kona. She believes Hanalei has had several meetings and developed some the rules before the Board today. Ala Wai has had 2 meetings since September; however, the rules were not discussed. Although, the agenda was published in a timely matter, J-1 item description was so vague for this [past] meeting that you couldn't figure out what sections of the rules were up for consideration. The submittal was only available this past Monday at 11:00am. There is at least 1 omission from the summary which affects 2 Oahu harbors and this rule is 231-27 which is not listed in the summary. Changes a single word "shall" to "may" which may lead to reduced potential revenues and referring to issuing live aboard permits. Administration officers have stated in open meetings that it is their personal opinion that there shouldn't be any live aboards and that the harbor should be privatized or commercialized where she understands there were meetings that were held towards those ends. However, she missed the memo where the rules were an expression of the Administration's desires and such behavior is in conflict to the law and the boating public they are supposed to serve. If Ala Wai meetings had taken place entire rule sections would have been condensed into plain language and developed other solutions where she related the parking. Ms. Mandrell suggested reprogramming a single pay station to print a windshield parking chip to allow any person to park on row A or B for up to 3 consecutive days and she spoke to Diamond Parking that it is doable. Instead of adding a new rule amend 234-16 from the previous package to increase the penalty and reduce the grace period which is the last paragraph of the Permit Processing Fees where you delete a couple words and amend the grace period. If DOBOR chose to they could have allowed Mr. Conlan to pay a \$1 penalty and retain his mooring. There was some discussion with the Board on which section Ms. Mandrell was referring to. Chair Thielen clarified that the amendment was to HAR§13-231-26(e)(f).

Robert Clarkin who is a boat owner at the Ala Wai Boat Harbor testified he has been there for over 50 years that the information regarding the rules hasn't gotten to the boat owners in a timely manner. The experience has been wonderful for most of those years, but the last 10 years the relationship between boaters and staff hasn't been good. He reiterated that there should be no reason for the number of empty slips, that there is a hidden agenda and they know there was a push for commercialization which has been confusing people.

Member Goode wondered how they can get past this recurring theme of not knowing what is going on. Mr. Underwood said that the Board told staff to go back and meet with the Ala Wai folks to discuss the dormant vessel rule and they aren't ready to go forward with that rule package because staff is still dealing with this one and that is why staff hasn't met with them. Since that meeting Mr. Underwood has not received one phone call or input on any of these rules from anybody. Staff has posted the harbors with notices. Everything is posted on the website as fast as they can. It's posted in the newspaper and with the new system going on-line staff will be able to contact everyone by e-mail as well as every boater. Staff is not trying to hide anything. The Chair asked

where the notices are posted and Mr. Underwood said at the harbor master's office, on all the restroom doors and staff will post them where they feel people are walking around the harbors. It was asked whether staff posts Land Board meetings and Mr. Underwood said they do not because the Land Board has their own Sunshine Laws. It's the responsibility of the public to follow those things and they can call DOBOR at any time. Staff from every Division in DLNR hears these same things and he doesn't know how much more they can do.

Member Agor asked whether there were certain clubs within the Ala Wai. Mr. Underwood said that Ms. Mandrell has an organization at the harbor. Member Agor suggested having the officers step in and to get the information out to their members. Chair Thielen suggested it would help to show people how to pull up the agenda on the website because when you do it pulls up all the submittals which is readily available for those with computer access and rather than duplicating that give instructions on the DOBOR website on where to look that they are posted 6 days prior to the Board meeting. This system was created before she came on board and finds it great.

Member Goode said that is part of the process. The whole purpose of the public hearing is to get the details like the case of Mr. Morry for the Board to consider and for the number of days he suggested 30 days or a month. He supports moving this along, but you got to have a way to disseminate information effectively and he agreed that other agencies have the same issue.

Chair Thielen said the grace period is troubling because we're round and round on that and spent a lot of time at the Attorney General's office figuring what they could do and there is tension there on that people who do have the boats and the slips would prefer to have a property interest in that. The way the Department has it set-up it's not a property interest in the slip. It's an annual permit that you have to renew on an annual basis and that is the cause of the tension on how to deal with the grace period. How do you devise a grace period to allow for that flexibility without slipping over into that other realm? This is what we've been struggling with. It's up to the Board on how to deal with it and staff knew it wasn't satisfactory with the way it is now. What is before you is the proposal developed from the input from the Attorney General's office on how to provide some grace period and it doesn't preclude further discussion on how to deal with other issues. It maybe that after going to public hearing what comes back to this Board is saying to address it in a different way and if so, you come up with a different way and go out to public hearing. One of the problems is what is in place, the default automatic termination and that nobody wants. Staff was going to go out to public hearing right after the last meeting, but there was a complaint from a representative from the Big Island and had to pull back for various reasons and now its been many more months that staff was not able to give anybody a grace period. The question is do you want to go forward with the public hearing with an imperfect grace period, send staff to work on something and continue with the absence of any grace period for who knows how long. She thought 50% is better than none. It would be better to get something started while something better might come up during the public meetings. The lack of having any options right now under the existing rules is frustrating everybody.

Member Gon agreed and referred to Mr. Underwood's recommendation of 10-30 days asking where that came from. Mr. Underwood said that range was from talking to people to get an idea and originally that was written for staff to come before the Board and even if they did that there would be a time cut-off of when you come before the Board. Staff came up with an automatic deal[.---I] if you forgot you have so much time to renew. Member Goode said he would support that and with the 90-60 day notices it will happen automatically. Chair Thielen said that the automatic notices will be on everyone's billing statement which is the notification of the deadline.

The Board discussed that they liked 30 days.

Member Goode moved to approve staff's submittal to go out to public hearing including 30 days provision and notice as broad as a dissemination as possible on the public hearing and the full rule package. Member Edlao seconded it.

Chair Thielen took the vote and all voted in favor. She asked Mr. Underwood to meet with Ms. Mandrell and show her how to pull up the Board agenda, submittals and attachments on the DLNR website. Post notice of the public hearing, not just in the newspaper, but also have the harbor agents post them in the harbors. Also, those notices should have the link from the website on where people can pull up the actual rules.

Ms. Mandrell said thank you, but she already knows how to download from the website, but wanted the Board to know that it wasn't available from that site until 11:00am this past Monday.

The Board:

Amended HAR§13-231-5(b) by adding 30 on the third line to read "...person may be granted a 30 calendar day period to..." and to disseminate the notice on the public hearing and full rule package as broadly as possible. Otherwise, the submittal was approved as submitted.

[Unanimously a]Approved as amended (Goode, Edlao)

1:30 PM RECESS

2:05 PM RECONVENED

Item A-1 MINUTES - October 28, 2010

Unanimously approved as submitted (Morgan, Gon)

Item H-1 Briefing on Non-Action Item Civil Enforcement Project Conducted by the Civil Resource Violations System and the Commercial Marine Licensing System

Bin Li, Administrative Proceedings Coordinator distributed a handout to the Board and introduced Reggie Kokubun, Chief Statistician at Division of Aquatic Resources (DAR). Item H-1, a non-action item which is a civil enforcement project conducted by the Chairperson's Administrative Proceedings Office and DAR. The Board adopted the penalties schedule in March 2009 referring to slide B regarding the Commercial Marine Licensing System (CMLS). There was a public outreach campaign to inform people of this initiative and staff's intention was to allow people ample time to prepare and adjust to the enforcement action. The first notices went out in June 2009 and after 18 months of enforcement action staff can report it's a big success. Mr. Li discussed slide E. The Progress – Violations Dropping and related the counts. Slide F. The Progress – Fisher Reactions shows a percentage of people's responses. A majority of fishers has complied, but there are contested cases which were mitigated within 2 weeks.

Reggie Kokubun reported that the baseline number of reports staff tracked was 2,700 licensed fishermen who submitted reports by the 10th of each month. Looking at slide G. The Progress – Improved Compliance chart he pointed out the blue line where at the beginning the response wasn't good although all the fishermen were notified prior to the start of the Civil Resource Violations System (CRVS) and when it was implemented the compliance went to 72% and stayed about there. The lavender line near the top gives the full compliance amounts for each month which is mid-90%. The whole purpose is to collect commercial fisheries data for our fishery management, total catch and staff wanted the data submitted on time.

Mr. Li said staff is coming back to the Board to review the penalties schedule made last year and whether or not staff needs to revisit the fine levels to see if they are appropriate. After 18 months of enforcement, compliance has gone up and staff doesn't see a need to adjust the fines, keep it as is. If staff makes any changes they will come back to the Board.

It was asked by Member Gon whether staff saw a lot of late fine payments and Mr. Li confirmed they did. Staff worked with the fisher on those cases.

Member Edlao asked what kind of contested cases staff had. Mr. Li said these were all delinquent commercial fishing reports where staff checks with DAR on the accuracy and timeliness of the reports. If not, staff will inform the fisher and give them time to file an accurate report.

Member Gon asked whether staff was getting a lot of second and third plus offenders. Mr. Li confirmed that there were quite a few because the offender could have been on military deployment, in prison, etc. Member Morgan asked whether anyone came in and said they won't pay. Mr. Li said staff hasn't heard that, but they have heard people say they can't afford it when the fines reach several hundred dollars and the fisher is part-time. If so, staff will consider it and give the fisher the mitigation.

Chair Thielen noted that this will work for certain types of violations. The reason it works well for the commercial fishers is the rules allow staff to suspend somebody's

license if the fisher doesn't make the payment and don't come into compliance which is the reason why staff hasn't had a problem with non-payment. It will work well with violations where there is a permit relationship, a contractual relationship and an on-going relationship with the Department. It would fair well for a lot of the boating violations for that reason. The benefit is it's faster, but it also deals with how you issue a violation where the Chair gave the example of a no wake zone in Kaneohe which is a petty misdemeanor. Are you really going to put that on their record? Staff doesn't like to do that. There are situations in Kealahou Bay with tourists. Are you going to issue a citation, go to court when the visitor is already back in Nebraska and have to fly back to Hawaii? There are a lot of things that are chronic and have gone on for awhile without any type of enforcement for those reasons. But, staff will work to operate on some of these lower level violations more as an administrative court. People have due process rights and have the right to appeal and could go through litigation through Bin Li as the litigation officer or through a contested case. But since these are cases on whether you filed or didn't it's not the contested case the Board would normally see that would take a year and multiple lawyers. The AG's office and staff can handle 20 at once in a pre-hearing conference and many of those would end in litigation or settle and concentrate on a few minor contested cases. The Board may have suggestions going forward for staff on what types of violations might be helpful to go into the civil system and keep in mind it's an option. It doesn't mean you can't go to the Land Board or you can't do the petty misdemeanor option. This is a third option that would open up to fishers. It's stunning the turn around by staff trying to get the commercial catch reports in a timely manner and to go from 30% to over 90% of people filing monthly within an 18 month period.

The Board members praised the work done by staff.

**Item K-1 Request to Adopt the Office of Conservation and Coastal Land's
Administrative Sanctions Schedule for the Processing of Minor
Conservation District Civil Resource Violations**

Mr. Lemmo briefed the Board that this is a follow up to Mr. Li's presentation for staff to deal with a backlog of minor violations in the conservation district and staff would like to use the CRVS system. The problem is in the conservation district you can be assessed up to a \$15,000 fine per violation in the conservation district rules. You deal with land use violations, major violations of many different types that have come before the Board before and other Divisions have other types of violations – fish catch reports, hunting violations as examples. There are a lot of violations that occur in the conservation district while important not major for instance someone goes out and clears an acre of land as long as they didn't cut down any endangered/threatened or native species, didn't cause any erosion problems and as long as what they did didn't affect anyone around them, but forgot to come to OCCL staff to get authorization. Situations like that or anything done under a minor permit staff would like to process them as administrative violations where staff would be seeking delegated approval to the Chairperson to process those violations under the CRVS system. Staff prepared a report attached to the submittal which is a penalties schedule for OCCL which deals with major, moderate, minor and very minor violations. Staff is not asking the Board to approve this penalty schedule. Staff is going

to use it to guide them in the way they manage all violations in the conservation district, big or small. Staff asks the Board to give them authorization to use the CRVS to process minor or very minor violations. The most they could charge is \$2,000. The penalty schedule attached does describe a process for the minor or very minor violations and staff would be using that in their administrative proceedings process. Mr. Lemmo thinks this would work because there used to be an administrative penalties system before CRVS was introduced. The Board approved this system for minor violations which was largely voluntary and it worked well. Staff wants to address the backlog of violation cases that they have which are minor or major. They have a new law that requires staff look at shoreline vegetation and enforce a new statute with respect to vegetation growing over the beach where staff wants to address those as minor violations. In the system if the violator doesn't like it and don't want to pay the fine it goes to a hearing officer and then it would come back to the Board. They are not eliminating anyone's due process rights. Staff can do this under HRS Chapters 183 (c) and 199 (d) and the rules the Board approves under the CRVS system say that one of the elements of the rules is allows the Board to adopt an administrative sanctions schedule. Staff is implementing the rules that have been approved by this administration and this Board and ask the Board to give staff authorization to process minor to very minor violations up to \$2,000.

Chair Thielen said that OCCL was working under this rare civil penalties system that predated these administrative rules and was the only one going on in the Department approved a long time ago by the Board. The maximum fine in the conservation district under State law at that time was \$2,000 and the Legislature changed that several years ago. The Department went back to the Legislature and said there were a lot of violations occurring which is far more significant and this statute is two decades old. Now the maximum fine under State law is \$15,000 plus restoration, the administrative cost for recovery and the cost to restore what occurred, that is the max. The prior penalties system that OCCL was working under the maximum was \$500. What is being proposed to the Board will commensurate with the new statutory amounts by saying it's up to and by putting it under the CRVS it comes under those rules that apply to the Department which would bind OCCL and give people their due process rights. The way they set up the mitigation is Bin Li in the Chairperson's Office is the mitigation person that way you have a consistent approach and a neutral party during mitigation. If it goes to contested case the AG's office would handle it and ultimately, it will come back to the Board.

Member Edlao asked about the administrative cost. Mr. Lemmo said that would be part of the \$10,000. Member Edlao asked whether the fine covers the hearings officer, going to the Board and taking more time. Mr. Lemmo said he has a hard time adding on additional costs as they move through the appeal process. Deputy Attorney General Linda Chow said generally if it goes up on appeal or if it's going through a contested case proceeding we generally said that you cannot charge for those costs because to ensure their due process rights are protected and because it's a protection of their constitutional rights we don't believe that its fair or possible for the Department to charge for that. Yes, once it goes to contested case the administrative costs would be cut off.

Member Edlao asked in the past they had fines and then administrative costs on top of the fines. Mr. Lemmo said the administrative cost is tacked on for the initial investigation that staff has to do to send people out to take pictures, collect information and any other cost incurred in the initial investigation phase. He thinks its okay to charge administrative costs for those things. Deputy AG Chow acknowledged that.

Member Gon moved to approve as submitted. Member Edlao seconded it.

Unanimously approved as submitted (Gon, Edlao)

Item K-2 Conservation District Use Application (CDUA) OA-3558 for the Waikiki Beach Maintenance Project By DLNR Office of Conservation and Coastal Lands, Located at Waikiki Beach, Honolulu, Oahu, Shoreline Fronting TMKs: (1) 2-6-001:008, 012, 013, 015, 018, and 019

Item K-3 Request to Hold a Second Round of Public Hearings to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Conservation District) by the Office of Conservation and Coastal Lands

Mr. Lemmo said he had nothing to add to these two submittals.

Member Gon said he was surprised people weren't here for Item K-3. Mr. Lemmo said a lot of people are happy that staff is going back out for public hearing. There were substantial changes.

Member Goode asked procedural we would go out for public hearing and now we have to go back out for public hearing can we say keep going out for public hearings until we're done. Deputy AG Chow explained because substantial changes were made to the rules they believe the Board should have an opportunity to review the proposed changes that are going out and that giving permission or giving authority to go out for another round of hearings is the Board's indication that they are okay with the substantial changes that have been made and to go through the process as required. Chair Thielen said that in the future if you are asked permission to go out for public hearing we would have the authority she assumed to delegate authority to the Department if it needs additional public hearing after substantial changes to go ahead and do that provided you guys get copies of those substantial changes in the mail. That is why staff came back to the Board for permission. Mr. Lemmo said he certainly likes it better in its current state and feels more comfortable with it. He feels comfortable coming back with this if they are okay during the hearing process to come back with this for approval. If there were changes they could make it in the future.

Member Gon moved to approve as submitted. Member Goode seconded it.

Unanimously approved as submitted (Gon, Goode)

Item H-2 Non-Action Item Report: State of the State Recreational Places - A Four Step Plan to restore State Parks, Harbors and Trails including an Accounting of the Revenues Generated through Recreational Renaissance Plan "B." *Materials to be distributed.*

Binders were distributed to the Board.

Paul Conry, Acting Land Deputy communicated to the Board the annual report on what staff has accomplished. Part of the introduction was to give additional perspective on how staff got to where we are with the start of this initiative. This is information that would have been useful at the start last year, but it continues to illustrate why we are engaged and why we need to continue on this course.

State of the State Recreational Places

PART I – Hawai'i's Parks, Harbors and Trails are in Shameful Condition due to Two Decades of Little Investment in Facilities and Essentially Annual Cuts to Operational Support

Page 6 – Graph on DLNR All Funds CIP Budget Over 20 Year Period for DOBOR, Parks, and Forest Recreation

Mr. Conry related that over the past 20 years there has not been consistent and inadequate funding for both our CIP investment, our investments in the repair and renovation of our recreational facilities in the state. Staff was aware of this internally, but the Board and the public were not. Forest trails had zero CIP 14 out of the 20 years. There was an increase in the past 4 or 5 years where DOBOR had a significant increase. Looking at our operating budgets over the past 20 years he referred to pages 10, 12 and 13. Page 10 chart for State Parks shows a red line of where it would be with the cost of inflation and page 11 is Forestry's and page 13 is DOBOR's which is keeping pace with inflation, but there isn't any enhancement value added where the Department is always playing catch up or is behind on what the conditions were 20 years ago. When the Board approved staff's Recreational Renaissance initiatives last year there were three things they said they were going to try to do.

1. To go forward with some rules and regulations to update what staff could do administratively.
2. Generate CIP funding from the Legislature to make an investment in repair and maintenance over a five year period. Looking at the graph only about \$13 million was targeted which was virtually zero for our recreational facilities.
3. Fees were implemented which was used to support.

PART II – A Four Step Plan to Restore Parks, Harbors and Trails

STATE PARKS

Curt Cottrell said these briefings should have been instituted years ago because the Board represents their shareholders. It is like an end of the year fiscal report to show the Board with these new initiatives kicked off what our success rate has been and what impediments have been. He referred to page 10 the steady decline of our general fund allocations from \$8 to \$4 million dollars and the gradual reliance on additional sources of funding through special fund initiatives. Right now we're \$8 million dollars short if we were to keep pace with inflation. We need to be funded at about \$12 million dollars a year annually to keep pace with where we were in 1992. With the initiatives the Board authorized staff to do even at best looking at the 2011 figure we are going to be about \$600,000 short with where we were last year. We are barely treading water given the decline of the general fund budget. Staff will keep trying to generate more income which they will do aggressively over the next year, but they are just trying to keep pace with the decline in the general fund budget.

Looking at Appendix C, it shows for Fiscal Year 2011 the current general fund appropriation and the special fund revenue broken down by quarter. Page 2, Total Special Fund Revenues is what they would have been prior to the initiative if you look at the Recreational Renaissance Plan B fees and looking at new sources of income in its totality. The \$85,000 is low which is post as of August and are short two months of revenue which is for this fiscal year because they started the new fees in March and are well over \$100,000 in new revenues in the totality of what staff has generated. In page 3, it shows how staff has applied in expenses what these special funded expenditures have been. The number is \$938 thousand that is greater than what our special fund revenue has been keeping in mind that they are still running previous year's surplus in the special fund, but we are spending more than what we are making.

Appendix D – The important take away on this is in spite of Mr. Cottrell saying we need to make up \$600,000 through a very creative combination of CIP funds where there was a big chunk that came in 2008 and those are the ones hitting the ground now – improvements at Wa'ahila, the stuff going on at Diamond Head and at Waianapanapa are '08 CIP funds, but some of these improvements are a combination of CIP and TAT funds staff gets from the transient accommodation tax as well as the Recreational Renaissance. Staff is creatively co-mingling various sources to still try to get these needed improvements on the ground even in light of a deficit if staff doesn't make up the budget shortfalls. In Kalalau, staff creatively used a combination of CIP funds, TAT, Recreational Renaissance and a grant-in-aid to do a big facelift where Mr. Cottrell displayed some photos of the work done – replacing signage, camp ground improvements, composters, trail improvements and painting of things.

DIVISION OF BOATING AND OCEAN RECREATION

Ed Underwood referred to page 6 noting that at the time that the small boat harbor program was transferred from DOT to DLNR there was about \$150 million in deferred repairs and maintenance so the Department was playing catch-up from the beginning. A majority of the facilities were built at the same time and nearing the end of their useful life and as soon as the Department got the facilities they continued to fail. The CIP kept climbing and climbing. Looking at the chart, in the beginning years the Division didn't get anywhere near enough money to bring these facilities up to par to use all the available slips within the harbors because that is where a lot of their income comes from, but around 2000 the Division was able to get the additional CIP and staff was able to leverage that with Federal funding as well and because of that staff was able to make substantial improvements. All the floating docks in the Ala Wai are completely rebuilt. There is a new septic system and a new water system. Haleiwa Harbor has new piers; Waianae Harbor has new piers and a new loading dock going in. There is a \$25 million dollar project on Kauai for the Kikiola breakwater and harbor. Kauai and Maui have dredging projects. Maui has huge ferry improvement projects where Manele is completed and Ma'alaea is kicking in. Big Island has the Ho'o Iki Ramp. If they can get the CIP monies staff can improve these facilities and it can be done quickly through Engineering Division, but last year they got a CIP of \$3,000 which was earmarked to buy a trailer to convert their Kauai District Office and bring it down to the harbor. Staff has just released \$35 million dollars in projects that are going out now. Staff is busy and improvements are being made. The boaters don't have a lot to complain about at this point because a lot of work is being done. We can't do CIP unless the Legislature says they can. Even if staff generates the income and it's in our account they can't do anything with it unless the Legislature gives them the approval. The Legislature has been very favorable to them and supports the Division in past initiatives and they hope that continues. Page 13, regarding the special fund it has remained flat and that's because recently this Board supported staff to go out to get the fee increases they desperately needed. Those fee increases are not only used to support the Boating operations noting that 25% goes to OHA and out of DOBOR's revenues that equals about 10%, 5% to B&F, they are the only division that pays for DOCARE services which accounts for 10%, 10% in debt service, payroll is about 35% that is 70% of the Boating revenue is taken from the top and that is before they pay for utilities. The way its set-up as a statewide system it's very difficult and is the reason why staff is coming before the Board to come up with other ways to generate income through the RecRen. The parking plan at Ala Wai is successful generating around \$60,000 a month, but we cannot put the burden of all these costs solely on the slip fees and that is what staff is working toward.

Mr. Underwood referred to Appendix C under Boating the 2010 operating funds was about \$11,400. This year it's coming out around \$11,900 in operating costs. Comparing the quarterly income with the expenses they are just breaking even. With Boating because they operate solely on user fees there can be a lag when the money comes in. It comes in goes to the General Fund and then it's transferred back to the Division. Staff anticipates by the end of the year they will be ahead a half million dollars. However, in these numbers we don't reflect our bond payments, our debt service because we haven't received our schedule yet. Last year, that debt service was about \$1.2 million and its

going to go up each time staff engages in another project anytime they have to reimburse money. Although, it's showing the Division being ahead a half million dollars, you add in that debt service we're back in the negative. What they are banking on is throughout this year they are going to have another fee increase going in and hopefully, they are going to have more slips available and they will get more of their fast ~~line~~land properties out. Combining all of those together they hope to break even. Staff appreciates the Board's support in helping clean-up the rules and how we manage these facilities because doing it the same way expecting a different result is insanity, you got to change it. Staff knows we'll hear the complaints with the revenue changes, but it has to come from somewhere. Mr. Underwood asked the Board's continued support with the CIP to benefit the program and the people of Hawai'i.

DIVISION OF FORESTRY AND WILDLIFE

Mr. Conry referred back to page 6 relating that Forestry hardly got any CIP and what it could be used for in repairs. In page 12, the operating budget is not keeping pace with inflation. It's augmented with Federal funds, but those come with strings and restrictions on how it can be spent. You need a base of State revenue to be able to effectively implement Federal grants and support. As for implementing their initiatives under the RecRen plan staff was authorized to go out and initiate two rule packages which were passed and approved for shooting ranges and wildlife sanctuaries. The wildlife sanctuaries commercial fees are coming up pretty quick. Back to Appendix C, page 7 shows where staff is in implementing their revenue increases – RecRen fees. This year they look to see a \$250,000 cut in general fund support for their RecRen program. The first quarter collected just over \$11,000, but they are moving backwards as far as funding for the recreation program supplemented with Federal funds to keep it going. Staff expects increased fees once they get their commercial sanctuary rules for commercial kayak.

ENGINEERING DIVISION

Carty Chang said that Engineering Division supports other divisions to implement the CIP referring to Curt and Ed's divisions and confirmed there is a backlog of about \$240 million. Staff plans to come up with a five year plan to implement the CIP to eliminate some the backlog through design and construction where there will always be some progress or work being done. The \$240 million is a minimum and doesn't include our support facilities - baseyards, harbor master offices. Appendix A illustrates the break down which he went over. Staff anticipates this asset management tool within a two year time period which will benefit the Department by determining whether a facility needs to be repaired or replaced. Allows staff to be more pro-active and quickly determine costs in budget by tracking expenditures – accountability. The reason it will take two years is it will take some time to input the data and a lot of work to access the various facilities.

PART III – How to Pay for the Necessary Surge of Capital Improvements and Repairs to Fix our Public Recreational Places

Mr. Tsuji referred to page 24 relating why staff is asking to increase fees pointing out the three points 1. much of the \$240 million in capital improvements can be paid for through non-taxpayer revenue, 2. user fees combined with restored operational budgets will cover the scheduled repair and maintenance and 3. strategic compromises will stretch dollars farther and finish improvements more quickly. Staff believes the user fees will be enough to restore the operating budget and general repair and maintenance. To go with pre-fab rather than custom built cabins. DLNR should continue to build departmental capacity, not just divisional strength where the various divisions come together to work on a unified plan. This will be this Chair's legacy because before that it was every division for themselves. The objective is to restore out budgets to 1992 levels, not raid the various special funds and taking it outside of DLNR and designate the revenues generated from the public lands to support the repair and maintenance of the public facilities under DLNR's jurisdiction.

Mr. Conry asked the Board to use this packet in their decision making and with calls from constituents and Legislators. He asked continued support of policy issues like the user fees and future responsibility and commitments.

It was asked by Member Gon who put together Appendix A. Mr. Chang replied that he and the previous Engineering Administrator, Eric Hirano along with consultation with other divisions. Member Gon suggested putting captions on all the photos because he wants to know where that place is to direct the Board's focus and he praised staff's work.

Member Goode commented on the graph which is a reflection of the economy and maybe we should make the pitch to the Legislature pointing out the 1992 figures or a benchmark. He would continue the Plan B because we will need the funds from somewhere.

Member Gon said it is good to have something to aim for and that is the power of this and the fact that this is a product of the divisions working together which he appreciates.

Member Morgan said being the newest Board member where at one of his first meetings all the divisions made their presentations and this is a nice wrap-up. Mahalos to Chair Thielen and her efforts.

Chair Thielen said that staff has worked on this for about three years with Plan A and then Plan B [~~where~~] each time they put in more information. People usual look at 10 year trends and never the 20 year trends. Thanks to Laura Stevens she looked backed through the budget every year on[5] session law and there were a couple things she wanted to point out. Looking at page 10, State Parks is a chart showing the actual special fund revenues. The Legislature puts in a special fund ceiling and they are saying you can spend up to X number of dollars that you raise yourself. The ceiling for State Parks would put them to \$12 million. For 2001 to 2006 were pretty good years in our State

economy, they are cutting the general funds during the good years and what they are saying in the budget is we are going to keep your total budget at \$11 million or whatever, but we are taking away your general funds and you have to raise fees. We have been caught in this downward spiral every year we are raising fees to off set the budget cut. Referring to Appendix C, Fiscal Year 2010 for State Park's general fund annual appropriation was \$4, 646, 776. For Fiscal Year 2011 the general fund appropriation was \$4,043,870. The Legislature cut \$600,000 in general funds and the public thinks they did nothing to the DLNR budget because they have a ceiling and added to the special fund ceiling. Already when the RecRen Plan B goes into affect staff has to raise \$600,000 this year to stay even with last year. What drove home to her was we are getting cut in good years and bad and she didn't know where that money is going, but its going elsewhere. The reason why boaters are angry with them and always in constant battles with people is what they are saying is true. You are raising the fees and it's not getting any better because we are raising fees and still ending up with less money than what we started the year before and that is what needs to change. Page 16 – The State issued almost \$1.7 Billion in CIP funds and DLNR received \$13 million mostly for the Dam Safety Upgrades. When you look at the CIP chart for State Parks most of those CIP allocations are because they had Legislative mandates to remove large capacity cesspools, we were under court order to comply with American Disabilities Act and those are not monies to upgrade general facilities. The challenge we are facing is even if we raise the revenues, we can dedicate the land, and pay the bonds back so it doesn't come out of the general fund the State will issue only so many bonds in any given year in order to protect our bond rating. There is a ceiling on a dollar amount of bonds regardless of where the payment comes from. Until this Department can move this wedge so that it's greater than 1% of the total State CIP we are not really going to get through the backlog. The positive side is DOT has gone through some modernization and got a lot of equipment and has over half the CIP budget. DOE has received a concentrated effort where they made a dent in their backlog. The University of Hawaii is lined up to be next. We are not a competitive threat to these other things, but its going to take changing the paradigm of how this Department has been looked at. Staff has to get the public to help or articulate to the Legislature to stop cutting the general funds so these fees can go to make places better. Appendix C, page 5 has the break down of the sources of the revenues from the special funds. The increase in mooring fees generated around \$37 thousand in 2010, but the rental of land generated the bulk of the money and this is one of the things DOBOR has said that made the boaters livid, the lands surrounding the harbors are not just for the benefits of the lucky 2000 boaters who happen to have slips in the harbors. They are to manage all of boating and recreation including stand alone boat ramps, isolated harbors that don't have the ability to generate commercial monies, the demarcation buoys, channel marker buoys, removal of abandoned boats...what you get in these meetings is the lucky 2000 in the slips who says that money belongs to my harbor and there are only four harbors in the State operating in the black thanks to the land revenues, but they support the deficits everywhere. If there is other information the Board thinks would improve this binder, look it over and work with staff to strengthen it. And, you can make this an annual report and this is a first in giving the bigger picture. Staff has worked together so hard these last three years she gives them credit to keeping the parks open.

Item D-3 Designation of Certain Select Properties for Income Generation to Support the Management of Lands under the Jurisdiction of the Board and Department of Land and Natural Resources; relating to various TMKs on the Islands of Oahu, Maui, Hawaii and Kauai as articulated in Exhibit B attached hereto and incorporated herein.

Mr. Tsuji conveyed that this is to support management of lands under the jurisdiction of the Board referring to Exhibit B which is a list of properties – commercial, industrial or resort type currently generating funds. The special land development fund is attached with the Land Division who manages and issues most of the lease land documents for the Department. He described the fund which supports other programs in the Department and comes from non-ceded lands. If ceded 20% goes to OHA and 80% is suppose to go back into the special fund. Some of it was used to fix the shortfall on a fixed amount. Staff is asking the Board to designate the properties on Exhibit B as income producing and to support management of those lands under the jurisdiction of this Board. Mr. Tsuji described how this fund is used to help cover the shortfall in other divisions. And, to have the Chairperson and Fiscal Office to look at this annually to allocate the funds accordingly in accordance to Chapter 171-19 which tells you how to spend the fund.

There was some discussion between the Board and staff on the industrial leases and not to sell.

Chair Thielen noted that the statute governs Budget and Finance, the Governor and the Legislature who has the ultimate authority with distribution of funds. What staff is asking is a policy call by the Board to support the concept the revenue from the public lands would go to support things in the Department. But, it sets it as a policy level preference stated by the Board. Currently, the revenues are in the Department barring a decision under law by B&F to redirect or the Legislature or the Governor redirecting. The fund has already been tapped by the Legislature before. The budget doesn't show where the special fund monies are coming from. The Legislature forgets and the following year they redirect the fund to something else. Staff went before them with a spread sheet showing what this fund is funding and the Legislature asked how did that happen? But they did it and they alerted that to them. This item is to show the preference of our governing Board is to put the monies towards offsetting these costs in the Department and supporting improvements.

Mr. Tsuji related the last fiscal year situation.

Member Gon moved to approve staff's recommendation. Member Morgan seconded it. The Board voted in favor.

Unanimously approved as submitted (Gon, Morgan)

Member Gon acknowledged Chairperson Thielen's hard work managing the DLNR.

Adjourned (Edlao, Gon)

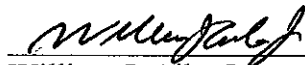
There being no further business, Chairperson Thielen adjourned the meeting at 3:43 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Interim Chairperson
Department of Land and Natural Resources